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Briefing on How To Use the Federal Register
For information on briefing in Boston, MA, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

BOSTON, MA

WHEN: April 16, at 9:00 a.m.
WHERE: Thomas P. O'Neill Federal Building Auditorium.
10 Causeway Street,
Boston, MA.
RESERVATIONS: Call the Boston Federal Information Center, 617–565–8129

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 307 and 316

RIN 3206-AD80

Veterans Readjustment Appointments; Temporary and Term Employment

AGENCY: U.S. Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: This interim rule reflects the statutory changes in the expiration date and conditions for use of the Veterans Readjustment Appointment (VRA) authority. The previous VRA statutory authority, provided by Public Law 99-576, expired on December 31, 1989. The Congress passed H.R. 901, as amended, and on December 18, 1989, the President signed the bill into law as Public Law 101-237, "Veterans' Benefits Amendments of 1989." This law continues and revises the VRA authority through December 31, 1993. Consequently, corresponding changes in 5 CFR parts 307 and 316 must be made. These regulations would allow agencies to use the VRA authority through December 31, 1993.

DATE: *Effective:* April 11, 1990
Comments must be received on or before May 11, 1990.

ADDRESSES: Send or deliver comments to: Fran Lopes, Assistant Director, Office of Affirmative Recruiting and Employment, Career Entry and Employee Development Group, U.S. Office of Personnel Management, room 6355, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Rose Lee, FTS or (202) 632-0643.

SUPPLEMENTARY INFORMATION: The VRA is a special noncompetitive appointment authority for certain veterans. OPM has responsibility for implementing the VRA Program as provided by the Veterans Readjustment Assistance Act of 1974, as amended (38 U.S.C. 2014). OPM is required by law to issue and amend regulations governing the VRA Program. The previous VRA authorizing statute expired on December 31, 1989. The authority has been modified and extended by Public Law 101-237, to December 31, 1993. Language in 5 CFR part 316, Temporary and Term Employment, §§ 316.302(c)(2) and 316.402(b)(4), needs no changes for veterans eligible for a VRA. However, in § 316.402, the introductory text to paragraph (b) is revised to provide for renewal or extension of a noncompetitive temporary limited appointment even if the employee's VRA eligibility for noncompetitive appointment expires or is lost during the authorized period of temporary employment.

The Congress has made many changes to the law, which provides for changes in eligibility, time limit on eligibility, maximum entry grade level, education restriction, and agency education/training agreement requirement. Eligibility for a VRA is targeted at those veterans who need the most help with employment. Eligibility is changed from "Vietnam era veterans" to "certain Vietnam era veterans" and "post-Vietnam era veterans." "Certain Vietnam era veterans" refers to Vietnam era veterans with a service-connected disability and Vietnam era veterans who are eligible for an authorized campaign badge for service during the Vietnam era. "Post-Vietnam era veterans" refers to eligible veterans any part of whose active military, naval, or air service was after the Vietnam era, whether or not the veteran is disabled or is eligible for a campaign badge. The Congress removed from eligibility for a VRA, those Vietnam era veterans who have neither a service-connected disability nor an authorized campaign badge for service during the Vietnam era. The term "Vietnam era" means the period beginning August 5, 1964, and ending on May 7, 1975.

The time limit on eligibility for appointment is the 4-year period beginning on the date of the veteran's last discharge or release from active duty, or the 2-year period beginning on the date of the enactment of the law, whichever is later. The law was enacted on December 18, 1989, the date the President signed it. Therefore, the 2-year period beginning on the date of enactment of the law ends on December 17, 1991. The date of enactment should not be confused with the effective date of the law, January 1, 1990. Following the 2-year period ending on December 17, 1991, only veterans with discharges within the last 4 years before the expiration date of the current law (December 31, 1993), will be eligible for a VRA.

To clarify the relationship between the VRA and veterans' preference, the VRA Program is authorized under title 38, U.S.C., Veterans' Benefits, rather than title 5, U.S.C., Civil Service. Thus, the definition of veteran for VRA purposes is the one found in 38 U.S.C. 2011; whereas the definition of veteran for veterans' preference is found in 5 U.S.C. 2108. The main difference between the two definitions is title 38 includes as a veteran someone with "other than a dishonorable discharge," while title 5 includes only veterans with a "discharge under honorable conditions." "Other than a dishonorable discharge" means the discharge may be honorable, general (means under honorable conditions), other than honorable conditions (took the place of undesirable discharge), or bad conduct discharge. "A discharge under honorable conditions" means an honorable discharge or a general discharge. A person eligible for a VRA need not be eligible for veterans' preference. With certain exceptions, eligibility for veterans' preference ended with active military service occurring after October 14, 1976. Most post-Vietnam era veterans may not be eligible for veterans' preference.

Public Law 101-237 does not authorize appointment of a Vietnam era veteran without a service-connected disability or an authorized campaign badge, who had been selected before the expiration of the former law ending December 31, 1989, and whose appointment was not made because it was pending certain conditions such as a security clearance. Under current law, such appointments cannot be made because those Vietnam era veterans are no longer eligible for a VRA.

Veterans eligible for a VRA, may be appointed to term or temporary limited appointments which do not lead to conversion to career or career conditional positions. A VRA eligible

veteran on a temporary limited appointment based on the old regulations that expired on December 31, 1989, is eligible for an extension even if his or her eligibility for a VRA noncompetitive appointment expires or is lost during the current law. This is because authority for the extension is implicit in the authority for the initial temporary limited appointment, even though the extension is technically a conversion to a new temporary limited appointment.

These revised regulations include only the basic requirements of law and eliminate language which properly belongs in the Federal Personnel Manual (FPM). Therefore, OPM will provide instructions and guidance to agencies through the Federal Personnel Manual (FPM) system.

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and making this effective immediately upon publication. The regulation is being made effective immediately to ensure maximum consistency with Public Law 101–237, which is now in effect and requires that the Veterans Readjustment Appointment Program be revised and extended through December 31, 1993 under 38 U.S.C. 2014.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal Government employment practices.

List of Subjects

5 CFR Part 307

Affirmative employment, Equal employment opportunity, Government employees, Reporting requirements, Veterans.

5 CFR Part 316

Affirmative employment, Equal employment opportunity, Government employees, Veterans.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM amends 5 CFR parts 307 and 316 as follows:

PART 307—VETERANS READJUSTMENT APPOINTMENTS

1. The authority citation in part 307 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 11521, 3 CFR 1970 Comp. p. 912; 38 U.S.C. 2014.

2. In § 307.101, paragraphs (b) and (c) are redesignated paragraphs (d) and (e) respectively, two new paragraphs (b) and (c) are added, and paragraphs (a) and (e) are revised to read as follows:

§ 307.101 Definitions.

In this part, (a) the term *veteran* has the meaning given in section 2011 (2)(A), (3) and (4) of title 38, United States Code, as follows:

(1) *Veterans of the Vietnam era* means an eligible veteran any part of whose active military, naval, or air service was during the Vietnam era.

(2) *Disabled veteran* means (A) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs, or (B) a person who was discharged or released from active duty because of a service-connected disability.

(3) *Eligible veteran* means a person who (A) served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge, or (B) was discharged or released from active duty because of a service-connected disability.

(b) *Certain veterans of the Vietnam era* means an eligible veteran of the Vietnam era who (A) has a service-connected disability, or (B) during such era, served on active duty in the Armed Forces in a campaign or expedition for which a campaign badge has been authorized.

(c) *Post-Vietnam era veteran* means an eligible veteran any part of whose active military, naval, or air service was after the Vietnam era.

* * * * *

(e) *Veterans readjustment appointment* is an excepted appointment made after April 8, 1970, under this part to a position otherwise in the competitive service of certain veterans of the Vietnam era and veterans of the post-Vietnam era.

3. In § 307.102, paragraphs (b) and (c) are redesignated paragraphs (c) and (d) respectively, a new paragraph (b) is added, and paragraphs (a) and (d) are revised to read as follows:

§ 307.102 Coverage and general responsibilities.

(a) Federal agencies have the responsibility to provide the maximum of employment and job advancement opportunities to certain veterans of the Vietnam era and veterans of the post-Vietnam era who are qualified for such employment and advancement.

(b) The time limit on eligibility for appointment is the 4-year period beginning on the date of the veteran's last discharge or release from active duty or the 2-year period beginning on the date of the enactment of the law, December 18, 1989, whichever is later.

* * * * *

(d) The current statutory authority for the program extends through December 31, 1993.

4. Section 307.103 is revised to read as follows:

§ 307.103 Appointing authority.

An agency may appoint any veteran who meets the basic veterans readjustment eligibility requirements provided by law as follows:

(a) Veteran of the Vietnam era who has a service-connected disability;

(b) Veteran who served on active duty during the Vietnam era in a campaign or expedition for which a campaign badge has been authorized;

(c) Post-Vietnam era veteran who is disabled;

(d) Post-Vietnam era veteran who is nondisabled.

PART 316—TEMPORARY AND TERM EMPLOYMENT

5. The authority citation for part 316 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, and E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); section 316.302 also issued under 5 U.S.C. 3304(c), 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585; section 316.402 also issued under 5 U.S.C. 3304(c) and 3312, 22 U.S.C. 2506 (93 Stat. 371), E.O. 12137, 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585.

6. In § 316.402, the introductory text to paragraph (b) is revised to read as follows:

§ 316.402 Authorities for temporary appointments.

* * * * *

(b) *Noncompetitive temporary limited appointments.* An agency may give a noncompetitive temporary limited appointment without regard to the existence of an appropriate register to an individual in one of the categories set out below, and may renew such temporary limited appointments in accordance with the conditions and time limits for extension of temporary appointments published by OPM in the Federal Personnel Manual. An individual who receives a valid

appointment under this paragraph will be eligible for such an extension even if his or her eligibility for a noncompetitive appointment expires or is lost (other than for personal cause) during the authorized period of temporary employment. Individuals eligible for noncompetitive temporary appointments are:

* * * * *

[FR Doc. 90-8290 Filed 4-10-90; 8:45 am]
BILLING CODE 6325-01-M

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5 CFR Part 890

RIN 3206-AD28

Federal Employees Health Benefits Program; Former Spouses of CIA and Foreign Service Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations that, among other things, implement the health benefits provisions of recent Central Intelligence Agency (CIA) and Foreign Service legislation. The regulations (1) describe the conditions under which certain former spouses of CIA and Foreign Service employees or former employees previously omitted from spouse equity legislation may enroll in the Federal Employees Health Benefits (FEHB) Program, (2) clarify the prohibition on dual enrollment for FEHB enrollees, and (3) contain several other minor technical changes. These regulations implement section 303 of the Intelligence Authorization Act for Fiscal Year 1987, Public Law 99-569.

DATES: Paragraph 890.301(g)(2) and § 890.303 effective May 11, 1990. Paragraph 890.301(g)(4) and § 890.302 were effective January 8, 1989. All other sections were effective October 1, 1986 for former spouses of Central Intelligence Agency employees; December 22, 1987 for former spouses of Foreign Service employees.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer (202) 632-4634, ext. 6747.

SUPPLEMENTARY INFORMATION: On November 8, 1988, OPM issued interim regulations applicable to former spouses of CIA and Foreign Service employees and former employees who are or were under the Central Intelligence Agency Retirement and Disability System (CIARDS) or the Foreign Service Retirement and Disability System (FSRDS), the Civil Service Retirement System (CSRS), or the Federal Employees Retirement System (FERS).

These regulations implemented section 303 of the Intelligence Authorization Act for Fiscal Year 1987, Public Law 99-569, which provided FEHB coverage to former spouses of CIA employees or former employees whose marriage was dissolved before May 7, 1985, if the former spouse (1) was covered by an FEHB plan as a family member any time during the 18-month period before the dissolution of marriage; (2) was married to the employee for not less than ten years during the period of CIA service, at least five years of which both the employee and the former spouse spent outside the United States; and, (3) has not remarried prior to age 55. Former spouses who are eligible for FEHB coverage under this section must have filed an application for health benefits and arranged to pay both the employee and agency share of the premium by April 1, 1987. OPM will waive this time limitation upon notification to do so by the Director of the CIA.

The interim regulations also implemented section 188 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Public Law 100-204, which provided FEHB coverage to former spouses of Foreign Service employees or former employees whose marriage was dissolved before May 7, 1985, if the former spouse: (1) Was covered by an FEHB plan as a family member any time during the 18-month period before the dissolution of marriage; (2) was married to the employee for not less than ten years during the employee's government service; and (3) has not remarried prior to age 55. Section 204 of Public Law 100-238, the Federal Employees' Retirement System—Technical Corrections Act, which extended the time limit for these former spouses to apply for FEHB coverage, was also implemented by the interim regulations. Former spouses who are eligible for FEHB coverage under these sections must have filed an application for health benefits and arranged to pay both the employee and agency share of the premium by October 7, 1988. OPM will accept a waiver of the filing date when notified of the waiver by the Department of State.

The interim regulations allow an individual entitled to health benefits as a former spouse who also has or becomes entitled to FEHB coverage as a Federal employee to defer or suspend the former spouse enrollment and carry the enrollment as an employee. When the enrollment as an employee terminates, the individual may enroll or resume the former spouse enrollment, provided he or she still meets the requirements for coverage as a former spouse. The final regulations expand this provision by allowing an individual entitled to health benefits as a former spouse who also has or becomes entitled to coverage as a family member under another person's FEHB enrollment to defer or suspend the former spouse enrollment and continue coverage as a family member. When coverage as a family member ends, the individual may enroll or resume the former spouse enrollment, provided he or she still meets the requirements for coverage as a former spouse. In all cases, the individual must establish entitlement to health benefits as a former spouse before the employing office can take any action to defer or suspend a former spouse enrollment. Additional Federal Personnel Manual (FPM) guidance will soon be issued that will outline the procedures to be followed by the office maintaining the former spouse enrollment (the employing office) and the agency where the former spouse who is also a Federal employee is employed (the employing agency).

In addition to the above provisions, Public Laws 99-569, 100-204, and 100-238 all contain a prohibition on dual enrollment of former spouses which complements the dual enrollment prohibition contained in chapter 89 of title 5, U.S. Code. Thus, the interim regulations included former spouses in the existing FEHB Program regulatory provision prohibiting dual enrollments at 5 CFR 890.302(a), and made other clarifying changes to the dual enrollment provision.

No comments were received on the interim regulations; therefore, they will not be republished in their entirety. We are publishing only those sections to which we are making changes.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they simply extend FEHB coverage to a small group of qualified former spouses of CIA and Foreign Service employees.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is adopting its interim rules published November 8, 1988 (53 FR 45069) as final rules with the following changes:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104 and Pub. L. 100–654; § 890.803 also issued under sec. 303 of Pub. L. 99–569, 100 Stat. 3190, sec. 188 of Pub. L. 100–204, 101 Stat. 1331, and sec. 204 of Pub. L. 100–238, 101 Stat. 1744; subpart K also issued under title II of Pub. L. 100–654.

2. In § 890.301, paragraph (g)(2) is revised to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(g) * * *

(2) An employee, or former spouse who has established eligibility for health benefits under § 890.803 of this part and who is not enrolled but is covered by the enrollment of another under this part, may register to be enrolled: (i) Within 31 days after termination of coverage for a reason other than death of the enrollee or cancellation, and (ii) within 60 days after termination of coverage because of the enrollee's death.

* * * * *

3. In § 890.303, paragraph (g) is revised to read as follows:

§ 890.303 Continuation of enrollment.

(g) *Former spouse entitled to coverage as employee or member of family.* An individual entitled to health benefits as a former spouse who also has or becomes entitled to health benefits coverage as a Federal employee or as a family member under another enrollment under this part, may defer or suspend coverage as a former spouse and continue his or her coverage as an employee or family member. The former spouse must have established entitlement to the health benefits coverage under § 890.803 of this part and filed all required documents with the employing office responsible for maintaining the former spouse enrollment within the time limits specified in § 890.805 of this part. The employing office shall note in the former spouse's file that the former spouse health benefits enrollment is being deferred or suspended until coverage as a Federal employee or as a family member ends. Upon loss of coverage as a Federal employee or as a family member, the individual is entitled to enroll or resume the enrollment as a former spouse, provided he or she remains eligible as such. A former spouse who enrolls because he or she lost coverage under another enrollment under this part for a reason other than cancellation must meet the requirements of § 890.301(g)(2). A former spouse who enrolls because he or she lost coverage under another enrollment under this part as a result of cancellation of the covering enrollment must meet the requirements of § 890.301(g)(4).

* * * * *

[FR Doc. 90–8289–Filed 4–10–90; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1823, 1901, 1942, 1944, 1948, and 1965

Forms SF 424.1, "Application for Federal Assistance (For Non-construction)," and SF 424.2, "Application for Federal Assistance (For Construction)"

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to provide for changes in forms references. This action is necessary because of changes in the name and number of the "Application for Federal Assistance" form and to correct other unsubstantial errors. The intended effect of the action is to do away with the use of several preapplication and application forms and replacing them with two forms. It will also bring FmHA regulations into compliance with OMB Circular A–102 and USDA Regulation 3015.

EFFECTIVE DATE: April 11, 1990.

FOR FURTHER INFORMATION CONTACT: Donna H. Roderick, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6328, Washington, DC 20250, telephone: (202) 382–9589.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. The amended regulations change the name and number of Forms AD–621, "Preapplication for Federal Assistance," AD–623, "Application for Federal Assistance (Nonconstruction Programs)," AD–624, "Application for Federal Assistance (for Construction Programs)," and AD–625, "Application for Federal Assistance (Short Form)," to Form SF 424.1, "Application for Federal Assistance (For Non-construction)," and Form SF 424.2, "Application for Federal Assistance (For Construction)." In addition, the amendments correct several typographical errors in the regulations, and correct the inadvertent omissions of prior unsubstantial changes to form names and reference number. This action is not published for proposed rulemaking since it involves only internal agency management and, therefore, publication for comment is unnecessary.

This action affects the following programs listed in the catalog of Federal Domestic Assistance.

10.405 Farm Labor Housing Loans and Grants
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.421 Indian Tribes and Tribal Corporation Loans
10.423 Community Facilities Loans
10.433 Rural Housing Preservation Grants
10.436 Technical Assistance and Training Grants

These programs/activities are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See 7 CFR 3015, subpart V (48 FR 29112, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983).

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

List of Subjects for 7 CFR Parts 1823, 1901, 1942, 1944, 1948, and 1965

Loan and grant programs—Housing and community development, Rural areas, Community development, Community facilities, Low and moderate income housing—rental.

Therefore, chapter XVIII, title 7, Code of Federal Regulations, is amended as follows:

1. The authority citations for the parts 1823, 1901, 1942, 1944, 1948, and 1965 continue to read as follows:

PART 1823—[AMENDED]

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

PART 1901—[AMENDED]

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 40 U.S.C. 442; 5 U.S.C. 301; 42 U.S.C. 2942; 7 CFR 2.23; 7 CFR 2.70.

PART 1942—[AMENDED]

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

PART 1944—[AMENDED]

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

PART 1948—[AMENDED]

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

PART 1965—[AMENDED]

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

CHAPTER XVIII—[AMENDED]

2. 7 CFR chapter XVIII is amended by removing the words "Form AD–621, 'Preapplication for Federal Assistance'," and adding in their place, the words "SF 424.1, 'Application for Federal Assistance (For Non-construction)'," in the following places:

(a) Part 1942, subpart I, § 1942.412(a)(1)(i)

(b) Part 1942, subpart J, § 1942.463(a)

(c) Part 1948, subpart B, § 1948.79(c)

3. 7 CFR chapter XVIII is amended by removing the words "Form AD–621" and adding in their place, the words "SF 424.1" in the following places:

(a) Part 1942, subpart I, §§ 1942.412(a)(1) (i) and (ii)

(b) Part 1944, subpart K, §§ 1944.526(a)(1) (second reference), (b)(1), (c)(3), 1944.531(c)(1) and Exhibit B, paragraph D 5

(c) Part 1948, subpart B, § 1948.79(k)(1)

4. 7 CFR chapter XVIII is amended by removing the words "Form AD–621, 'Preapplication for Federal Assistance'," and adding in their place, the words "SF 424.2, 'Application for Federal Assistance (For Construction)'," in the following places:

(a) Part 1942, subpart A, § 1942.2(a)(1)

(b) Part 1944, subpart D, § 1944.170(a)

(c) Part 1944, subpart E, § 1944.231 (introductory text)

(d) Part 1944, subpart N, § 1944.676(a)

5. 7 CFR chapter XVIII is amended by removing the words "Form AD–621" and adding in their place, the words "SF 424.2" in the following places:

(a) Part 1942, subpart A, §§ 1942.2 (a)(1), (a)(1)(ii), (a)(2), and 1942.17(m)(1)

(b) Part 1944, subpart E, §§ 1944.231 (a)(1) and (2) and (a)(9)(ii)(A)(*1*)

(c) Part 1944, subpart N, § 1944.676(a)

(d) Part 1948, subpart B, § 1948.84(b)

6. 7 CFR chapter XVIII is amended by removing the words "Form AD–621, 'Preapplication for Federal Assistance'," and adding in their place, the words "SF 424.2 (for preapplication submission)" in the following places:

(a) Part 1944, subpart D, exhibit A–1, (introductory text of paragraph I)

(b) Part 1944, subpart E, exhibit A, paragraph II C (introductory text), and exhibit A–6 (introductory text)

7. 7 CFR chapter XVIII is amended by removing the words "Form AD–623, 'Application for Federal Assistance (Nonconstruction Programs)'," and adding in their place, the words "SF 424.1," in the following places:

(a) Part 1944, subpart K, § 1944.526(d)(1)

(b) Part 1948, subpart B, § 1948.79(i)

8. 7 CFR chapter XVIII is amended by removing the words "Form AD–623" and adding in their place, the words "SF 424.1," in the following places:

(a) Part 1944, subpart K, §§ 1944.525(d)(2), 1944.531 (a), (b), (c), and (c)(4)

(b) Part 1948, subpart B, §§ 1948.79 (k) and (k)(4)

9. 7 CFR chapter XVIII is amended by removing the words "Form AD–624, 'Application for Federal Assistance (for Construction Programs)'," and adding in their place, the words "SF 424.2" in the following places:

(a) Part 1942, subpart A, § 1942.2(c)(2)

(b) Part 1948, subpart B, § 1948.84(a)

10. 7 CFR chapter XVIII is amended by removing the words "Form AD–625, 'Application for Federal Assistance Short Form)'," and adding in their place, the words "SF 424.2 (for application submission)," in the following places:

(a) Part 1944, subpart D, § 1944.171(a), exhibit A–1 (introductory text of paragraph II), and exhibit A–2 (introductory text of paragraph II),

(b) Part 1944, subpart E, Exhibit A–8 (introductory text)

11. 7 CFR chapter XVIII is amended by removing the words "Form AD–625," and adding in their place, the words "SF 424.2," in the following places:

(a) Part 1944, subpart D, Exhibit A–1, paragraph II A.

(b) Part 1944, subpart E, Exhibit A, paragraph V A

12. 7 CFR chapter XVIII is amended by removing the words "AD–621, 'Preapplication for Federal Assistance'," and adding in their place, the words "SF 424.2, 'Application for Federal Assistance (For Construction)' (for preapplication submission)," in the following places:

(a) Part 1944, subpart D, § 1944.171(d)

13. 7 CFR chapter XVIII is amended by removing the words "AD–625, 'Application for Federal Assistance (Short Form)'," and adding in their place, the words "SF 424.2, 'Application for Federal Assistance (For Construction)' (for application submission)," in the following places:

(a) Part 1944, subpart D, § 1944.171(d)

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

Subpart N—Loans to Indian Tribes and Tribal Corporations

14. In Exhibit A, paragraph (1), the words, "AD–621, 'Preapplication for Federal Assistance'," are changed to "SF 424.1, 'Application for Federal Assistance (For Non-construction)'."

PART 1901—PROGRAM-RELATED INSTRUCTIONS

Subpart E— Civil Rights Compliance Requirements

15. In § 1901.203(c)(4)(ii), the words "the Form AD–625, 'Application for Federal Assistance'," are changed to "SF 424.1, 'Application for Federal Assistance (For Non-construction), or SF 424.2, 'Application for Federal Assistance (For Construction)'."

Subpart H—A-95 Review, Evaluation, and Coordination of Projects

16. Section 1901.355(a)(1) is amended by changing the words "Standard Form 424, 'Federal Assistance'," to "SF 424.1, 'Application for Federal Assistance (For Non-construction)', or SF 424.2, 'Application for Federal Assistance (For Construction)'," and by removing the words "or Form AD–621, 'Preapplication for Federal Assistance'."

PART 1942—ASSOCIATIONS

Subpart A—Community Facility Loans

17. Section 1942.2(a)(1) is amended by changing the reference § 1901.352 (c) to § 1901.352 (b).

Subpart C—Fire and Rescue Loans

18. In § 1942.104(a), the words, "Form AD–624, 'Application for Federal Assistance (For Construction Programs)'," are changed to "SF 424.2, 'Application for Federal Assistance (For Construction)'."

Subpart J—Technical Assistance and Training Grants

19. In § 1942.466(a)(1), the words, "Form AD–623, 'Application for Federal Assistance (Nonconstruction Programs)'," are changed to "SF 424.1, 'Application for Federal Assistance (For Non-construction)'."

PART 1944—HOUSING

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

20. In Exhibit A–1, paragraph I D, and Exhibit A–2, paragraph I J, the words "race, color, national origin, sex, or marital status" are changed to "race, color, sex, age, handicap, marital or familial status or National origin."

Subpart K—Technical and Supervisory Assistance Grants

21. In § 1944.526(a)(1), the first reference to the words, "Form AD–621" are changed to "SF 424.1, 'Application for Federal Assistance (For Non-construction)'."

22. In § 1944.531(c)(9), Exhibit B, paragraph A 3, and Exhibit C, paragraph A 3, the name of Form FmHA 400–4 is changed from "Nondiscrimination" to "Assurance" Agreement.

23. In §§ 1944.531 (c)(7), 1944.533 (c), (d), (f)(1), (2), (2)(iv), (4) and (4)(i), and 1944.536, the words "440–1" are changed to "1940–1."

24. In Exhibit B, paragraph A 1, and Exhibit C, paragraph A 1, the words "Form FmHA AD–621, 'Preapplication for Federal Assistance'," are changed to "SF 424.1."

Subpart N—Housing Preservation Grants

25. In § 1944.681(a), the words "Form AD–623, 'Application for Federal Assistance (Nonconstruction Programs)'," are changed to "SF 424.2."

PART 1948—RURAL DEVELOPMENT

Subpart B—Section 601—Energy Impacted Area Development Assistance Program

26. In § 1948.84(a), the words "Form AD–621," are changed to "SF 424.2," 'Application for Federal Assistance (For Construction)'."

27. In § 1948.84 (d) and (i)(1), the words "Form AD–624," are changed to "SF 424.2."

28. In § 1948.79(j), the words "AD–623," are changed to "SF 424.1."

29. In § 1948.79(d)(4), the name of Form FmHA 400–4 is changed from "Nondiscrimination" to "Assurance" Agreement.

PART 1965—REAL PROPERTY

Subpart B—Security Servicing for Multiple Housing Loans

30. In § 1965. 65(f)(12), the words "AD–625, 'Application for Federal Assistance (Short Form)'," are changed to read, "SF 424.2, 'Application for Federal Assistance (For Construction)'."

Dated: March 14, 1990.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 90–8238 Filed 4–10–90; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Part 75

[Docket No. 89–162]

Equine Infectious Anemia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations on interstate movement of horses and other equines that test positive for equine infectious anemia (EIA) to permit the owners of EIA reactors to send those reactors to an approved stockyard for sale for immediate slaughter. We are also requiring that approved stockyards must hold EIA reactors in quarantine pens at least 200 yards from other livestock. The easing of restrictions should make it more practical for owners to prevent the spread of disease by sending reactors to slaughter, while the quarantine pen requirement will prevent the spread of EIA in stockyards.

EFFECTIVE DATE: May 11, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. C.A. Gipson, Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, room 769, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6954.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 75 (referred to below as the regulations) contain provisions for the interstate movement of horses, asses, ponies, mules, and zebras that test positive for communicable diseases, including equine infectious anemia (EIA). The purpose of these provisions is to prevent the spread of communicable diseases, including EIA.

On December 29, 1986, we published in the **Federal Register** (51 FR 46867–46869, Docket Number 85–023) a document proposing to allow interstate shipment of EIA reactors to an approved stockyard for sale for immediate slaughter. For a full discussion of the problems of interstate movement of EIA reactors, refer to that proposal. The proposal was intended to reduce interstate shipping expenses of EIA reactor horses by allowing greater flexibility to shippers of EIA reactors and, thereby, encourage the slaughter of EIA-affected animals.

We withdrew that proposal and published a revised substitute proposal in the **Federal Register** on July 5, 1989 (54 FR 28070–28073, Docket No. 87–033). In this document we proposed that stockyards would have to keep EIA reactors in quarantined pens at least 200 yards from other equines, unless the reactors were moved out of the stockyard within 24 hours of arrival. We also proposed to require that the reactors must, within 30 days of their arrival at the stockyard, be moved directly to slaughter.

Our proposal invited the submission of written comments, due on or before September 5, 1989. We received four comments, three from State departments of agriculture and one from a veterinary association. One commenter supported the proposed rule, and three commenters (two State departments of agriculture and the veterinary association) recommended changes to the proposal. These comments and our responses are discussed below.

We are adopting the provisions of the proposed rule, with two modifications discussed below, for the reasons set forth in the proposal and in this supplementary information section.

Comment: All EIA reactors should be quarantined at a distance of 200 yards from other equines in the stockyard;

there should be no exception for reactors moving from the stockyard within 24 hours of their arrival. A study by Foil, Adams, McManus and Issel presented at the Fifth International Conference on Equine Infectious Diseases presents evidence that the length of time diseased horses are in close proximity is not the predominant factor determining the spread of EIA

Response: All State animal health agencies enforce State regulations at stockyards to prevent disease transmission by EIA reactors. These State regulations were designed mainly to deal with EIA reactors sold intrastate, but are also applied to EIA reactors moved interstate to the stockyards and remaining there for less than 24 hours. EIA reactors sold intrastate generally spend no more than 24 hours at a stockyard, and we believe the risk posed by EIA reactors moving interstate which spend less than 24 hours at a stockyard are equivalent to the risks posed by EIA reactors sold intrastate at a stockyard. We believe State regulations are generally effective in preventing EIA transmission at stockyards over a 24-hour period. We believe that the State regulations, in combination with the Fly Control Program required by § 75.4(c)(3) of this rule, make it necessary to require that EIA reactors spending less than 24 hours at a stockyard be placed in quarantine pens 200 yards from other equines.

The cited study did not address the probability of EIA transmission over short periods of time; the study involved groups of EIA reactor and EIA negative horses pastured together over nine month periods. None of the EIA negative horses became infected during the first 14 days of contact with the EIA reactors.

Comment: The requirement that EIA reactors must be moved from the stockyard within 30 days after arrival should be changed to require them to be moved within 3 to 5 days after arrival. The shorter period would reduce the exposure time of other equines and should still meet the needs of EIA reactor owners.

Response: The 30 day period was chosen because evidence shows that a 200 yard isolation distance would serve to prevent EIA transmission indefinitely, and because some stockyards only hold sales on a monthly basis. A 30 day period would allow reactors that arrive at a stockyard soon after a monthly sale to be held in quarantine until the next sale. However, we agree that there is a slight increase in risk of EIA transmission associated with increases in the length of time reactors are held in quarantine at the stockyard. We have determined that persons moving EIA reactors interstate for sale should be able to plan their movement so that the reactors will not spend more than five days at the stockyard. Therefore, we are changing § 75.4(b)(4) to reduce the deadline for removing EIA reactors from the stockyard to five days after their arrival. Because this change may occasionally result in EIA reactors being required to leave the stockyard prior to an opportunity to be sold for slaughter, we are also changing this paragraph to allow EIA reactors to be returned directly to its home farm in accordance with § 75.4(b)(3) after spending five days at the stockyard.

Comment: Requiring screened enclosures for EIA reactors at stockyards would more effectively prevent EIA transmission than requiring a 200 yard isolation distance, and would be more manageable for stockyards. Many stockyards are not large enough to allow a quarantine pen 200 yards from other equine pens. Also, if non-equine animals are allowed in the intervening distance (e.g., cattle), flies carrying EIA could gradually move from the quarantine pen, and from host to host in the non-equine pens, to pens containing equines that are not EIA reactors.

Response: Requiring screened enclosures would add a significant economic burden to stockyards without increasing the degree of safety provided by a 200 yard isolation distance. Holding EIA reactors in screened pens in proximity to non-reactor equines might reduce the number of flies in contact with the reactors, but it would facilitate the movement of those flies (through broken screens, or at times when the pen doors are opened) between EIA reactors and non-reactors. Scientific studies, including a report by Kemen, McClain and Matthysse (1978) have found EIA transmission to occur only when infected and susceptible horses were housed close together, and have found that susceptible horses separated by more than 100 meters from infected horses were usually not infected. The experiences of various States enforcing a 200 yard isolation have also shown this distance to be an effective barrier to fly movement. It is not anticipated that all stockyards could be approved to handle EIA reactors for interstate movement; those that lack the room to set up a quarantine pen at 200 yards distance should not be approved.

We have considered the possibility of flies moving from EIA reactors to nonequine animals in the 200 yard isolation area, and from those animals to non-reactor equines. We believe that few flies would successfully advance more than 200 yards to come in contact with susceptible equines, even if non-equine hosts were available in the intervening area; studies [1] have shown that tabanid flies tend to remain in the vicinity or nearby hosts as long as they are available. However, since the probability of transmission of EIA to non-reactor equines would be slightly increased by the presence of non-equine hosts in the 200 yard isolation area, we are changing the rule to prohibit the presence of any animals in the isolation area. We are also adding a definition of "animals" to the regulation, to include cattle, sheep, goats, other ruminants, swine, horses, asses, mules, zebras, dogs, and poultry. These are the animals likely to be present at stockyards and to present a risk of spreading flies if allowed in the 200 yard isolation area.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule". Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We anticipate that fewer than 500 EIA reactor horses and other equines will be moved interstate each year under the amended provisions of part 75. This number is insignificant compared with the total number of horses and other equines moved interstate each year. Most movements of EIA reactors and other equines are done by small entities, moving one or a few horses at a time. Those small entities moving EIA reactors in accordance with this rule will experience a slight financial benefit due to increased opportunities for and decreased costs associated with the sale for slaughter of their EIA reactors. Approximately thirty approved stockyards, most of which are small entities, will experience slight financial

[1] Documents concerning our evaluation of these studies are contained in the administrative record for this rule, and may be obtained by writing to Dr. C.A. Cipson, Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, Room 769, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

benefits by being allowed to deal in EIA reactors. The average annual benefit to these stockyards is anticipated to be approximately $250.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection provisions in this document. These provisions have been assigned OMB control number 0579–0051.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 75

Animal diseases, Contagious equine metritis, Dourine, Equine, Equine infectious anemia, Horses, Quarantine, Transportation.

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

Accordingly, 9 CFR part 75 is amended as follows:

1. The authority citation for part 75 continues to read as follows:

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134–134h; 7 CFR 2.17, 2.51, and 371.2(d).

§ 75.4 Interstate movement of equine infectious anemia reactors and approval of laboratories, diagnostic facilities, research facilities, and stockyards.

2. In § 75.4, the heading is revised as set forth above.

§ 75.4 [Amended]

3. In § 75.4, paragraph (a) is amended to add, in alphabetical order, the following definitions:

* * * * *

Animals. Cattle, sheep, goats, other ruminants, swine, horses, asses, mules, zebras, dogs, and poultry.

* * * * *

Approved stockyard. A stockyard, livestock market, or other premises, under state or federal veterinary supervision where horses or other equines are assembled for sale purposes, and which has been approved by the Administrator under this part.

* * * * *

Operator. The individual responsible for the day-to-day operations of the specifically approved stockyard.

* * * * *

§ 75.4 [Amended]

4. In § 75.4, paragraph (b) is amended to change "(b)(1), (b)(2), or (b)(3)" in the first sentence to read "(b)(1), (b)(2), (b)(3), or (b)(4)", to change the period at the end of paragraph (b)(3) to read"; and"; and to add a new paragraph (b)(4) to read as follows:

(b) * * *

(4) The reactor is moved interstate through no more than one approved stockyard for sale for immediate slaughter, and is moved within five days of its arrival at the approved stockyard directly to:

(i) Slaughter at a federally inspected slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), or,

(ii) Slaughter at a state-inspected slaughtering establishment that has inspection by a state representative at the time of slaughter, or,

(iii) The home farm of the reactor in accordance with paragraph (b)(3) of this section.

* * * * *

5. In § 75.4, the heading to paragraph (c) is revised to read "Approval of Laboratories, Diagnostic or Research Facilities, and Stockyards." and a new paragraph (c)(3) is added to read as follows:

§ 75.4 Interstate movement of equine infectious anemia reactors and approval of laboratories, diagnostic facilities, research facilities, and stockyards.

* * * * *

(c) * * *

(3) The Administrator will approve stockyards to handle reactors moved interstate under paragraph (b)(4) of this section when the operator of the stockyard executes the following agreement:

Agreement for Specifically Approved Stockyard for Handling Known Equine Infectious Anemia Reactor Horses and Other Equines Pursuant to Title 9 of the Code of Federal Regulations

[Name of Stockyard] _____
[Address and Stockyard] _____

I, (name of operator), operator of (name of stockyard), hereby agree to maintain and operate this stockyard at (premises location) in accordance with each of the provisions set forth herein.

Cooperation

(1) An accredited veterinarian, state representative, or APHIS representative shall be on the stockyard permises on sale days to perform duties in accordance with state and federal regulations.

(2) The state animal health official and the veterinarian in charge shall be furnished with a current schedule of sale days which apply to the stockyard and any revision to the schedule of sale days prior to implementation of such revision.

(3) State representatives and APHIS representatives shall be granted, during normal business hours, access to stockyard premises and facilities to determine compliance with the requirements of title 9, Code of Federal Regulations and the Standards of this agreement.

Handling of Horses and Other Equines

(4) Horses and other equines shall be received, handled, and released by the stockyard only in accordance with title 9 of the Code of Federal Regulations.

(5) Any horses and other equines classified as equine infectious anemia reactors and accepted by the stockyard for sale shall be: (a) Placed in quarantined pens at least 200 yards from all non-EIA-reactor equines or other animals, unless moving out of the stockyard within 24 hours of arrival; and (b) consigned from the stockyard only to a slaughtering establishment or to the home farm of the reactor in accordance with title 9, Code of Federal Regulations, part 75.

Facilities

(6) Quarantined pens for the confinement of horses and other equines classified as equine infectious anemia reactors shall be clearly placarded "Quarantined," "Equine Infectious Anemia," or "Swamp Fever."

Fly Control Program

(7) The stockyard shall have in effect a fly control program utilizing at least one of the following: baits, fly strips, electric bug killers ("Fly Zappers," "Fly Snappers," or similar equipment), application of a pesticide effective against flies, applied according to the schedule and dosage recommended by the manufacturer for fly control.

Records

(8) Any document relating to animals which are or have been in the stockyard shall be maintained by the stockyard for a period of 1 year from the date the animal arrives at the stockyard.

(9) State representatives and APHIS representatives shall be granted, during all hours the stockyard business office is open, access to all documents required to be maintained pursuant to paragraph (8) of this agreement, and authority to reproduce such documents upon request.

I, _____, hereby acknowledge receipt of a copy of title 9, Code of Federal Regulations, part 75, and hereby acknowledge that I have been informed and understand that failure to abide by the provisions of this agreement constitutes a basis for the withdrawal of approval from this stockyard.

Request Approval
Operator of the Stockyard _____

Recommended Approval
State Animal Health Official _____
Date _____
Recommended Approval
Veterinarian in Charge _____
Date _____
Approval Granted
Administrator, Animal and Plant Health Inspection Service _____
Date _____

§ 75.42 [Amended]

6. In § 75.4, the heading of paragraph (d) is revised to read "**Denial and withdrawal of approval of laboratories, diagnostic or research facilities, and stockyards.**"

7. In § 75.4, the introductory sentence to paragraph (d) is amended to insert "or of any stockyard to handle reactors under this part," after "or of any diagnostic or reserch facility to receive reactors moved interstate," and to insert "or stockyard" after "the laboratory or diagnostic or research facility".

8. In § 75.4, the introductory sentence of paragraph (d) is further amended to change the period to a comma and to add "or, in the case of a stockyard, upon a determination that the stockyard is not maintained and operated in accordance with the standards specified in paragraph (c)(3) of this section."

9. In § 75.4, paragraph (d)(1) is amended to add "or stockyard" after "laboratory or facility".

10. In § 75.4, paragraph (d)(2) is amended to add "or stockyard" after "laboratory or facility" wherever it appears in the paragraph.

11. In § 75.4, a new paragraph (d)(5) is added to read as follows:

§ 75.4 Interstate movement of equine infectious anemia reactors and approval of laboratories, diagnostic facilities, research facilities, and stockyards.

* * * * *

(d) * * *

(5) Approval for a stockyard to handle reactors under this part will be automatically withdrawn by the Administrator when the operator of the approved stockyard notifies the Administrator, in writing, that the stockyard no longer handles reactors moved interstate under this part.

Done in Washington, DC, this 5th day of April 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-8379 Filed 4-10-90 8:45 am]

BILLING CODE 3410-34-M

FEDERAL ELECTION COMMISSION

[Notice 1990-4]

11 CFR Part 110

Contributions and Expenditures: Prohibited Contributions

AGENCY: Federal Election Commission.

ACTION: Final rule: Announcement of effective date.

SUMMARY: On November 24, 1989 (54 FR 48580), the Commission published the text of revised regulations at 11 CFR 110.4(a) which prohibit foreign nationals from making contributions and other persons from accepting such contributions in connection with any election for local, State or Federal public office. These regulations implement section 441e of the Federal Election Campaign Act of 1971, as amended. 2 U.S.C. 431 *et seq.* The Commission announces that these rules are effective as of April 11, 1990.

EFFECTIVE DATE: April 11, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376-5690 or toll free (800) 424-9530.

SUPPLEMENTARY INFORMATION: Section 438(d) of title 2, United States Code, requires that any rule or regulation prescribed by the Commission to implement title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days before final promulgation. The revisions to 11 CFR 110.4 were transmitted to Congress on November 17, 1989. Thirty legislative days expired in the House of Representatives on March 23, 1990 and in the Senate on March 26, 1990.

Announcement of Effective Date: 11 CFR 110.4, as published at 54 FR 48580, is effective as of April 11, 1990.

Dated: April 5, 1990.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 90-8419 Filed 4-10-90; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 500, 543, 544, 545, 546, 550, 552, 563, 563b, 563f, 567, 574 and 584

[No. 90-546]

RIN 1550-AA13

Miscellaneous Conforming and Technical Amendments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule; miscellaneous conforming and technical amendments.

SUMMARY: The Office of Thrift Supervision ("Office") is amending its regulations in order to standardize most filing procedures for applications requiring action by the Office in Washington, the Office's Washington staff, or by a District Office. Filing procedures in 12 CFR 563d.1, and 12 CFR parts 563g and 563b, with the exception of §§ 563b.3(i) and 563b.28, remain unchanged. The centralized system of filings will better enable the Office to monitor the status of applications filed for review in Washington. This procedure will simplify and expedite application processing.

EFFECTIVE DATE: June 11, 1990.

FOR FURTHER INFORMATION CONTACT: Cindy Hausch, Financial Analyst, (202) 906-7488; Cheryl Martin, Regional Director, (202) 906-7869; Kathleen O. Willard, Deputy Director, (202) 906-6789; Patrick G. Berbakos, Director, (202) 906-6720, Corporate Activities; Robyn Dennis, Financial Analyst, (202) 331-4572, Industry Rehabilitation, Supervision Operations; Lawrence D. Kaplan, Staff Attorney, (202) 906-7508, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On August 10, 1987, President Reagan signed into law the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. 100-86, 101 Stat. 552. Pursuant to section 410(a) of CEBA, the Federal Home Loan Bank Board ("Board"), predecessor to the Office, promulgated Applications processing guidelines, at 12 CFR 571.12 (1988). In order to streamline further the processing of applications submitted to the Office's Washington staff for review, the Office is amending 12 CFR 500.32 to implement a centralized system for application filings, in order to ensure that all appropriate offices, as required by Regulations, receive copies of application filings. Pursuant to § 500.32(c), most application filings required to be made with the Office's

Washington staff shall be made with the Applications Filing Room, 1700 G Street, NW., Washington, DC 20552.

Furthermore, the Office is amending most filing requirements within its regulations for applications requiring Office action. Such technical amendments provide a cross reference to the pertinent subsection of § 500.32(c), which provides for the number of copies applicants shall file with the Applications Filing Room and with the appropriate District Director, as set forth in § 500.32(b). As filings may be acted upon by one or more offices of the Office in Washington and/or at a District Office, the subsections of § 500.32(c) provide explicit filing instructions as to how many copies of a filing should be made with the Applications Filing Room (and the proper labels for copies) or with a District Office and to which location the signed or executed copies should be directed. The Applications Filing Room staff will be charged with the responsiblity to ensure that the appropriate number of copies of a filing have been received in Washington, pursuant to the appropriate subsection of § 500.32(c). Upon a determination that the requisite number of copies of a filing have been received in Washington, the Applications Filing Room will distribute copies, within one business day of receipt, to the appropriate Washington Divisions of the Office for review. Filings will be deemed to be received, for purposes of applicable applications processing periods, when the appropriate number of copies, properly labeled, are filed with the Applications Filing Room and/or with the appropriate District Office if so required by applicable regulations.

The Applications Filing Room will operate Monday through Friday from 9 a.m. until 5 p.m. local Washington DC time, and will be closed on federal holidays. Any filings received by the Applications Filing Room after 5 p.m. will be considered received the following business day.

The centralized system of filings will better enable the Office to monitor the status of applications filed for review in Washington. Filings made in Washington pursuant to this system will be received in one central location; therefore, upon receipt of a filing, only one Division of the Office will determine that all required copies have been received from an applicant. This procedure will simplify and expedite application processing.

Excluded from these technical amendments are all securities filings pursuant to part 563g, § 563d.1, and all standard and modified conversion applications, pursuant to part 563b, since such filings and applications are so closely linked to the securities offering that is part of a conversion. Due to the amount of securities filings, and the time sensitivity of such filings, the Office is of the opinion that such filings should continue to be made directly with the Corporate and Securities Division, Office of Thrift Supervision, as the Corporate and Securities Division is the primary Washington office responsible for the review of such filings. However, the filing instructions for applications involving acquisitions of stock of recently converted associations and for supervisory conversions, are amended to conform to the filing requirements set forth in § 500.32(c)(2), as several offices in Washington, in addition to the District Offices, are responsible for their review. Furthermore, generally at this time the Office is not amending the filing requirements for filings where the Office or its delegatee are not required to take action.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(a)(2), the Office has determined that this rule is not subject to the notice and comment provisions of the Administrative Procedure Act because it relates to agency management, a matter specifically exempt from the provisions of such act.

Regulatory Flexibility Analysis

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) do not apply.

Executive Order 12291

It is determined that this final rule does not constitute a "major rule" and, therefore, does not require the preparation of a final regulatory impact analysis.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). The labeling requirements contained in § 500.32 constitute a collection of information which has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507(h)) and has been assigned control number 1550–0056. Comments on the labeling collection of information requirement should be sent to the Office of Management and Budget, Paperwork Reduction Project (agency code 1550), Washington, DC 20503, with copies to the Director, Information Services Division, Communications Services, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Additionally, the Office of Thrift Supervision has submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507(h)) separate information collection packages for the following sections: Section 546.4, 563.38, 563.80, 563.233 and 584.2–2.

The collection of information in this proposed regulation is in § 500.32. This information is required by the Office of Thrift Supervision to implement a centralized system for application filings, in order to ensure that all appropriate offices, as required by Regulations, receive copies of application filings. Section 500.32 provides explicit filing instructions as to the appropriate labeling for each filing. The information is required only when a savings association files an application with the Office of Thrift Supervision.

Estimated total annual reporting burden is 433.8 hours.

Estimated average annual burden per respondent is .05 hours.

Estimated number of respondents is 2,892.

Estimated annual frequency of responses is 3 per respondent.

List of Subjects in 12 CFR Parts 500, 543, 544, 545, 546, 550, 552, 563, 563b, 563f, 567, 574, and 584

Accounting, Administrative practice and procedure, Antitrust, Consumer protection, Credit, Currency, Electronic funds transfer, Flood insurance, Holding companies, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Trusts and trustees.

Accordingly, the Office hereby amends part 500, subchapter A, parts 543, 544, 545, 546, 550, 552, subchapter C, parts 563, 563b, 563f, 567, 574, subchapter D, and part 584, subchapter F, chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 500—ORGANIZATION AND CHANNELLING OF FUNCTIONS

1. The authority citation for part 500 continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

2. Amend § 500.32 by adding paragraph (c) to read as follows:

§ 500.32 Offices of the Office of Thrift Supervision; information and submittals.

* * * * *

(c) *Filings.* Applications, notices or other filings, as provided for in the Office's regulations shall be submitted to the Office in accordance with the following fling requirements, as designated in the appropriate section of the Office's regulations,[1] unless the specific filing instructions in the substantive regulations [2] explicitly provides otherwise. For purposes of this paragraph, filings will be deemed to be received, for purposes of applicable applications processing periods, when the appropriate number of copies, are filed with the Applications Filing Room and/or with the appropriate District Office if so required by applicable regulations.

(1) The original shall be filed with the Applications Filing Room, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; two conformed copies shall be filed with the District Director, or his or her designee, of the appropriate District Office, as specified in § 500.32(b). All copies should be clearly captioned as to the type of filing and should contain all exhibits and other pertinent documents. The original filed with the Applications Filing Room shall be appropriately labeled with one of the following designations, depending upon the directions set forth in the regulations or guidelines pertaining to the applications, filing, or notice:

(i) "Supervision Operations";

(ii) "Corporate and Securities Division"; or

(iii) "Information Services Division";

(2) The original and one conformed copy shall be filed with the Applications Filing Room of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552; two conformed copies shall be filed with the District Director, or his or her designee, of the appropriate District Office, as specified in § 500.32(b). All copies should be clearly captioned as to the type of filing and should contain all exhibits and other pertinent documents. The copies filed with the Applications Filing Room shall be appropriately labeled with one of the following designations, depending upon the directions set forth in the regulations or guidelines pertaining to the application, filing, or notice:

(i) Both such copies, including the original, shall be labeled "Supervision Operations";

(ii) Such copies shall be labeled as follows: the original, "Corporate and Securities Division" and one copy, "Supervision Operations" or

(iii) Such copies shall be labeled as follows: the original, "Enforcement" and one copy, "Supervision Operations";

(3) The original and two conformed copies shall be filed with the Applications Filing Room, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; two conformed copies shall be filed with the District Director, or his or her designee, of the appropriate District Office, as specified in § 500.32(b). All copies should be clearly captioned as to the type of filing and should contain all exhibits and other pertinent documents. The copies filed with the Applications Filing Room shall be appropriately labeled as follows: the original, "Corporate and Securities Division", one copy "Supervision Operations" and one copy, "Information Services Division";

(4) The original and three conformed copies shall be filed with the Applications Filing Room, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; two conformed copies shall be filed with the District Director, or his or her designee, of the appropriate District Office, as specified in § 500.32(b). All copies should be clearly captioned as to the type of filing and should contain all exhibits and other pertinent documents. The copies filed with the Applications Filing Room shall be appropriately labeled as follows: the original and one copy, "Corporate and Securities Division", one copy "Supervision Operations" and one copy, "Information Services Division";

(5) The original and two conformed copies shall be filed with the District Director, or his or her designee, of the appropriate District Office, as specified in § 500.32(b). All copies should be clearly captioned as to the type of filing and should contain all exhibits and other pertinent documents;

(6) The original shall be filed with the District Director, or his or her designee, of the appropriate District Office, as specified in § 500.32(b); one conformed copy shall be filed with the Information Services Division, Communications Services, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. All copies should be clearly captioned as to the type of filing and should contain all exhibits and other pertinent documents;

(7) The original and one conformed copy shall be filed with the Applications Filing Room, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; six conformed copies shall be filed with the District Director or his or her designee, of the appropriate District Office, as specified in § 500.32(b). All copies should be clearly captioned as to the type of filing and should contain all exhibits and other pertinent documents. The copies filed with the Applications Filing Room shall be appropriately labeled as follows: the original, "Corporate and Securities Division", and one copy "Supervision Operations". The copies filed with the District Director shall be appropriately labeled as follows: one copy "Department of Justice", one copy "Office of Comptroller of the Currency", one copy "Federal Reserve Board", one copy "Federal Deposit Insurance Corporation", and two copies "District Director"; or

(8) Four additional copies of a filing shall be filed with the District or his or her designee of the appropriate District Office, as specified in § 500.32(b). All copies of the filing should be clearly captioned as to the type of filing and should contain all other pertinent documents. The copies filed with the District Director should be appropriately labeled as follows: one copy "Office of Comptroller of the Currency", one copy "Federal Reserve Board", one copy "Federal Deposit Insurance Corporation", and one copy "State Supervisor".

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[1] Instructions for how to file applications, notices or other filings are located in the various substantive regulation(s) throughout the Office's regulations. The following is an example of how an application for permission to organize a Federal savings association should be filed:

Example: Pursuant to 12 CFR 543.2 "An application for permission to organize a Federal savings association shall be filed in accordance with § 500.32(c)(2)(i) of this chapter." Thus, an applicant located in the state of Georgia would file the original and one conformed copy of the application with the Applications Filing Room, Office of Thrift Supervision, 1700 G Street, NW, Washington, D.C. 20552, and two conformed copies with the District Director of the District Office of Atlanta, as specified in § 500.32(b). All copies would be clearly captioned as to the type of filing, and would contain all exhibits and other pertinent documents. Two copies would be filed with the Applications Filing Room of the Office in Washington, DC.

[2] For example, in general, securities filings pursuant to part 563g of this chapter, § 563d.1 of this chapter and all standard and modified conversion applications, pursuant to Part 563b of this chapter should be made directly to the Securities Filings Desk, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; however, filings pursuant to §§ 563b.3(i) and 563b.28 of this chapter, should be submitted to the Applications Filing Room and the District Director in accordance with the instructions provided in §§ 563b.3(i) and 563b.28 of this chapter.

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

3. The authority citation for part 543 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 4, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 802, 91 Stat. 1147, as amended (12 U.S.C. 2901 *et seq.*).

4. Amend § 543.2 by revising paragraphs (b) and (d)(2) to read as follows:

§ 543.2 Application for permission to organize.

* * * * *

(b)(1) *Filing requirements.* Applications for permission to organize a Federal savings association shall be filed in accordance with § 500.32(c)(2)(i) of this chapter. Applications for permission to organize a Federal interim association shall be submitted in the same manner as the related filings(s).

(2) *Form; supporting information.* Persons applying for permission to organize a Federal savings association shall obtain application and notice forms and related instructions from the District Director, or his or her designee. An application and all required supporting information shall be executed by at least seven persons ("the applicants"). The applicants shall provide a copy of the proposed charter and bylaws including any preapproved charter provisions specifically requested and submission of corporate title request for approval by the Office and inclusion as Section One of the association's charter. The District Director, or his or her designee, shall notify the applicants in writing that the application is complete and direct the applicants to publish notice pursuant to paragraph (d) of this section when the District Director, or his or her designee, determines that all required information has been submitted.

* * * * *

(d) * * *

(2) Promptly after publication, the applicant(s) shall transmit copies of each notice and publisher's affidavit of publication in the same manner as the original filing.

* * * * *

5. Section 543.9(a) is revised to read as follows:

§ 543.9 Application for conversion to Federal mutual charter.

(a) *Filing.* Any state savings and loan association type or state savings bank type institution desiring to convert itself into a Federal savings association shall, after approval by its board of directors, file an application on forms obtained from the District Director. Such application shall be filed in accordance with § 500.32(c)(5) of this chapter unless such application is filed in conjunction with another filing; if such conversion application is filed in conjunction with another filing, then such application shall be filed in the same manner as the related filing. The applicant shall submit any financial statements or other information the Office may require, and pay all costs, determined by the Office, of consideration of the application.

* * * * *

PART 544—CHARTER AND BYLAWS

6. The authority citation for part 544 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 802, 91 Stat. 1147, as amended (12 U.S.C. 2901 *et seq.*).

7. Amend § 544.2 by revising paragraphs (a) and (c), the first two sentences of paragraph (d)(2), and paragraph (e) to read as follows:

§ 544.2 Charter amendments.

(a) Whenever a Federal mutual savings association, whose charter specifies that amendments shall be effective upon filing, completes the procedures necessary to amend its charter, or adds supplementary sections thereto, the association shall submit such amendment, along with a certification by the secretary of the association that the amendment is validly authorized and approved. Such amendment and certification shall be filed in accordance with the procedures set forth in paragraph (e) of this section. The District Director, or his or her designee, shall return to the association a copy of the charter amendment stamped to demonstrate its filing. Such filing shall constitute filing with the Office for purposes of determining the effectiveness of the amendment. An association whose charter requires final approval by the Office of all charter amendments shall be deemed to have obtained such final approval on the date it files a copy of the properly adopted amendment in the manner specified in the first and second sentences of this paragraph (a).

* * * * *

(c) *Reissuance of charter.* A Federal mutual savings association that has amended its charter may apply to have its charter, including the amendments, reissued by the Office. Such requests for reissuance shall be filed in accordance with § 500.32(c)(5) of this chapter and contain signatures required under § 544.1 of this part, together with such supporting documents as may be needed to demonstrate that the amendments were properly adopted. The Director delegates to the Chief Counsel authority to sign on his or her behalf charters submitted for reissuance pursuant to this paragraph (c).

(d) * * *

(2) *Appeal.* Denial of an application by a District Director pursuant to paragraph (d)(1) of this section may be appealed under the following procedures: Within 30 days after notification of the District Director's decision as provided herein, the applicant must file a request for review in accordance with § 500.32(c)(1)(ii) of this chapter. The appeal request should include the application for charter amendment as originally filed with the District Director, or his or her designee, a copy of the District Director's letter denying preliminary approval of the application, and a statement of the specific reasons why the District Director's denial is contended to be erroneous. * * *

* * * * *

(e) *Filing requirements.* Application for preliminary approval of any amendment to the charter of a Federal mutual savings association (other than amendments for which preliminary approval is granted pursuant to paragraph (b) of this section) that is eligible to be processed under delegated authority pursuant to paragraph (d) of this section, shall be made by filing the proposed amendment in accordance with § 500.32(c)(5), along with a statement regarding eligibility for processing under delegated authority. Such statement should consist of a brief description of the proposed amendment and a statement that such amendment does not:

(1) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management; or

(2) Involve a significant issue of law or policy.

If a proposed amendment is not eligible to be processed under delegated authority pursuant to paragraph (d) of this section, then the proposed amendment should be filed in accordance with § 500.32(c)(1)(ii) of this chapter.

8. Amend the first two complete sentences and the introductory portion of the third sentence of § 544.3 to read as follows:

§ 544.3 Adoption of new Federal charter by a Federal savings association.

If the Board of directors of a Federal mutual savings association proposes to amend its charter to read in the form of any other Federal mutual savings association charter, the amendment may be approved by a majority vote of members present at any duly called regular or special meeting of members. In the case of a Federal stock association, the board of directors of which proposes to amend its charter to read in the form of any other Federal stock association charter, the amendment may be approved by the stockholders by a majority of the total votes eligible to be cast at a legal meeting. In either case, after such vote, the association shall submit, in accordance with § 500.32(c)(5) of this chapter, the following petition together with any requested change in the association's title or location of home office, and the Office thereafter will issue a charter in the form sought, upon approval by the District Director or the Director of a change in such name or location:

* * * * *

9. Amend § 544.5 by revising paragraph (a), the first two sentences of paragraph (c)(2) and paragraph (d) to read as follows:

§ 544.5 Federal mutual savings association bylaws.

(a) A Federal mutual savings association shall operate under bylaws that contain provisions which comply with all requirements specified by the Office in this section and which are not otherwise inconsistent with the provisions of this section, the association's charter and all other applicable laws, rules, and regulations. Bylaw provisions which adopt the language of the model bylaws set out as an appendix to this Part shall be deemed to comply with the requirements of this section. A copy of all bylaws and amendments thereto shall be filed with the District Director, or his or her designee, shall be filed in accordance with the procedures set forth in paragraph (d) of this section and the association shall include an opinion by the association's counsel that said bylaws or amendments thereto comply with all applicable laws, rules, and regulations.

* * * * *

(c) * * *

(2) *Appeal.* Denial of an application by a District Director pursuant to paragraph (c)(1) of this section may be appealed under the following procedures: Within 30 days after notification of the District Director's decisions as provided herein, the applicant must file a request for review in accordance with § 500.32(c)(1)(ii) of this chapter. The appeal request should include the application for bylaw amendment as originally filed with the District Director, a copy of the District Director's letter denying preliminary approval of the application, and a statement of the specific reasons why the District Director's denial is contended to be erroneous. * * *

* * * * *

(d) *Filing requirements.* Application for preliminary approval of any amendment to the bylaws of a federal mutual savings association that is eligible to be processed under delegated authority pursuant to paragraph (c) of this section, shall be made by filing the proposed amendment in accordance with § 500.32(c)(5) of this chapter, along with a statement regarding eligibility for processing under delegated authority. Such statement should consist of a brief description of the proposed amendment and a statement that such amendment does not:

(1) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the associaton's stock, or the removal of incumbent management, or

(2) Involve a significant issue of law or policy.

If a proposed amenement is not eligible to be processed under delegated authority pursuant to paragraph (c) of this section, then the proposed amendment should be filed in accordance with § 500.32(c)(1)(ii) of this chapter.

PART 545—OPERATIONS

10. The authority citation for part 545 continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

11. Amend § 545.74 by revising the introductory text of paragraph (c), and paragraphs (c)(3)(vi) and (g) to read as follows:

§ 545.74 Service corporations.

* * * * *

(c) *Permitted activities.* A service corporation in which a Federal savings association may invest is permitted to engage in such activities reasonably related to the activities of Federal savings associations as the Office may approve. Applications for approval to engage in such activities shall be made in accordance with § 500.32(c)(5) of this chpater. In addition, a service corporation may engage in the following activities without prior Office approval provided the notice required by paragraph (b)(7) of this section has been given:

* * * * *

(3) * * *

(vi) Acquiring real estate for prompt development or subdivision, for construction of improvements, for resale or leasing to others for such construction, or for use as manufactured home sites: *Provided,* That any development, subdivision, and construction of improvements is to be completed within eleven years after acquisition of the real estate, unless such period is extended by the District Director upon written application by the service corporation, which application shall be filed in accordance with § 500.32(c)(5) of this chapter, and which application shall be supported by information evidencing that the service corporation will proceed or has proceeded in accordance with a prudent development plan and has not caused undue delay in the completion of construction: and *Provided further,* That acquisition of an option to purchase is not an acquisition for the purpose of determining the periods provided for in this paragraph (c)(3)(vi);

* * * * *

(g) *Appeals.* Denial of an application by the Senior Deputy Director for Supervision Operations pursuant to paragraph (f) of this section may be appealed to the Director of the Office under the following procedure. Within 30 days after notification of the decision of the Senior Deputy Director for Supervision Operations as provided in this section, the applicant must file a written request for review with the Director stating the applicant's desire to appeal the decision of the Senior Deputy Director for Supervision Operations. The request should be submitted in accordance with § 500.32(c)(2)(ii). The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the denial of the Senior Deputy Director

for Supervision Operations is contended to be erroneous. The Senior Deputy Director for Supervision Operations shall forward to the Director the record, or a copy thereof, used as a basis for the determination together with any other information believed by the Senior Deputy Director for Supervision Operations to be useful in reviewing the determination. If an applicant does not file a request for review within the time permitted under this section, any objection to the initial determination by the Senior Deputy Director for Supervision Operations is waived. A timely filing of a request for review in accordance with the provisions of this section shall be mandatory for securing judicial review of an initial determination.

12. Section § 545.77(b) is revised to read as follows:

§ 545.77 Real estate for office and related facilities.

* * * * *

(b) *Requests for Office approval of exceptions.* A Federal savings association shall file requests for Office approval of exceptions to limitations in this section, in accordance with § 500.32(c)(5) of this chapter.

13. Amend § 545.82 by revising the introductory text of paragraph (f)(1), paragraph (f)(3)(i), and paragraph (f)(3)(iii) to read as follows:

§ 545.82 Finance subsidiaries.

* * * * *

(f) *Notification to the District Director.* (1) Prior to the establishment of any finance subsidiary, the transfer of any additional assets to an existing finance subsidiary, or the issuance of any additional securities by an existing finance subsidiary, the board of directors of the parent Federal savings association, or a duty authorized executive committee thereof, shall submit, in accordance with § 500.32(c)(5) of this chapter, written notification to the association's District Director specifying:

* * * * *

(3)(i) Any Federal savings association that fails to meet its capital requirement, as provided in § 567.2 of this chapter, or that is operating under any supervisory agreement, shall not establish a finance subsidiary, transfer assets to an existing finance subsidiary, or issue additional securities through an existing finance subsidiary without the prior written approval of the Federal savings association's District Director. To obtain the written approval of the District Director, the board of directors of the Federal savings association, or an authorized executive committee thereof, shall submit a written application, in accordance with § 500.32(c)(1)(i) of this chapter, containing the information specified in paragraph (f)(1) of this section, as well as any additional information required by the District Director.

* * * * *

(iii) The District Director shall approve the application of a Federal savings association, subject to the requirements of paragraph (f)(3)(i) of this section, unless he or she finds that the establishment and operation of a finance subsidiary, the transfer of assets to an existing finance subsidiary, or the issuance of additional securities by an existing finance subsidiary is likely to affect adversely the financial condition or the safe and sound operation of the parent Federal savings association. An adverse determination made by the District Director may be challenged by filing, within 30 days of receipt of written disapproval, a petition for reconsideration with the Office. The association shall file its petition in accordance with § 500.32(c)(2)(ii) of this chapter. The Office shall grant or deny a petition for reconsideration filed pursuant to paragraph (f)(3)(iii) of this section in writing within 30 days of receipt. If the Office does not deny such petition for reconsideration within the prescribed time, the Office shall be deemed to have granted the petition for reconsideration.* * *

* * * * *

14. Section 545.92(c) is revised to read as follows:

§ 545.92 Branch offices.

* * * * *

(c) *Application form; filing; completion; supervisory objection.* Applicants shall obtain Office-approved application and notice forms and related instructions from the District Director, or his or her designee. The application shall be filed in accordance with § 500.32(c)(5) of this chapter. The Office shall not accept an application if in its opinion the association is not eligible or its policies, condition, or operations afford a basis for supervisory objection. The District Director shall determine that the application is complete, the applicant is eligible, and that as a preliminary matter there is no basis for supervisory objection to the application, before giving direction for publication of notice.

* * * * *

15. Section 545.96(b) is revised to read as follows:

§ 545.96 Agency.

* * * * *

(b) *Additional services.* Except for payment on savings accounts, offering of any services not listed in paragraph (a) of this section may be approved by the District Director. Requests for permission to offer additional services shall be filed in accordance with § 500.32(c)(5) of this chapter.

* * * * *

PART 546—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

16. The authority citation for part 546 continues as follows:

Authority: Sec. 2, 48 Stat. 128, 132, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 802, 91 Stat. 1147, as amended (12 U.S.C. 2901 *et seq.*).

17. Amend § 546.2 by revising paragraph (d)(1) to read as follows:

§ 546.2 Procedure; effective date.

* * * * *

(d)(1) Processing of an application under this section shall follow the procedures set forth in § 563.22 of this chapter except that applicants may also mail such notice to the voting members of each savings association within the time specified in § 543.2(d) of this chapter.

* * * * *

18. Amend § 546.4 by revising the first sentence of the concluding text to read as follows:

§ 546.4 Voluntary dissolution.

* * * * *

The plan, and a statement of reasons for proposing dissolution and for proposing the plan, shall be submitted to the Director, in accordance with § 500.32(c)(2)(ii) of this chapter, for approval. * * *

PART 550—TRUST POWERS OF FEDERAL SAVINGS ASSOCIATIONS

19. The authority citation for part 550 continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464), sec. 501, 94 Stat. 161, as amended (12 U.S.C. 1735f–7).

20. Section 550.2(a) is revised to read as follows:

§ 550.2 Applications

(a) A Federal savings association desiring to exercise fiduciary powers, either through a trust department or

through an affiliate, shall file, in accordance with § 500.32(c)(5) of this chapter, an application indicating which trust services it wishes to offer and providing the information necessary to make the determinations under paragraph (b) of this section.

* * * * *

21. Section 550.14(a) is revised to read as follows:

§ 550.14 Surrender of trust powers.

(a) Any Federal savings association which has been granted the right to exercise trust powers and which desires to surrender such rights shall file a certified copy of the resolution of its board of directors signifying such desire. Such resolution shall be filed in accordance with § 500.32(c)(5) of this chapter.

* * * * *

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

22. The authority citation for part 552 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a).

23. Amend § 552.2–2 by revising paragraph (b) to read as follows:

§ 552.2–2 Procedures for organization of interim Federal stock association.

* * * * *

(b) Approval of an application for permission to organize an interim Federal stock association shall be conditioned upon approval by the Office or its delegate of an application to merge the interim Federal stock association, or upon approval by the Office or its delegate of other transaction which the interim was chartered to facilitate. Applications for permission to organize an interim Federal stock association shall be submitted in the same manner as the related filing(s). In evaluating the application, the Office will consider the purpose for which the association will be organized, the form of any proposed transactions involving the association, the effect of the transactions on existing associations involved in the transactions, and the factors specified in § 552.1(b)(1) to the extent relevant.

* * * * *

24. Amend § 552.4 by revising paragraphs (a) and (d), the first two sentences of paragraph (e)(2) and paragraph (f) to read as follows:

§ 552.4 Charter amendments.

(a) Whenever a Federal stock association whose charter specifies that amendments shall be effective upon filing completes the procedures necessary to amend its charter, or adds supplementary sections thereto, the association shall submit such amendment, along with a certification by the secretary of the association that the amendment is validly authorized and approved. Such amendment and certification shall be filed in accordance with the procedures set forth in paragraph (f) of this section. The District Director, or his or her designee, shall return to the association a copy of the charter amendment stamped to demonstrate its filing. Such filing shall constitute filing with the Office for purposes of determining the effectiveness of the amendment. A Federal stock association whose charter provides that any amendment shall be effective on the date it receives final approval of the Office shall be deemed to have obtained such final approval on the date it files a copy of the properly adopted amendment with the District Director, or his or her designee, in the manner specified in the second sentence of this paragraph (a).

* * * * *

(d) Reissuance of charter. A Federal stock association that has amended its charter may apply to have its charter, including the amendments, reissued by the Office. Such requests for reissuance should be filed in accordance with § 500.32(c)(5) of this chapter and contain signatures required under § 552.3 of this part, together with such supporting documents as needed to demonstrate that the amendments were properly adopted. The Director delegates to the Chief Counsel or his or her designee authority to execute on his behalf charters submitted for reissuance pursuant to this paragraph (d).

(e) * * *

(2) *Appeal.* Denial of an application by a District Director pursuant to paragraph (e)(1) of this section may be appealed to the Office under the following procedures: Within 30 days after notification of the District Director's decision as provided herein, the applicant must file a request for review in accordance with § 500.32(c)(1)(ii) of this chapter. The appeal request should include the application for charter amendment as originally filed with the District Director, a copy of the District Director's letter denying preliminary approval of the application, and a statement of the specific reasons why the District Director's denial is contended to be erroneous.* * *

* * * * *

(f) *Filing requirements.* Application for preliminary approval of any amendment to the charter of a federal stock association (other than amendments for which preliminary approval is granted pursuant to paragraph (b) of this section) that is eligible to be processed under delegated authority pursuant to paragraph (e) of this section, shall be made by filing the amendment in accordance with § 500.32(c)(5) of this chapter, along with a statement regarding eligibility for processing under delegated authority. Such statement should consist of a brief description of the proposed amendment and a statement that such amendment does not:

(1) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management; or

(2) Involve a significant issue of law or policy.

If a proposed amendment is not eligible to be processed under delegated authority pursuant to paragraph (e) of this section, the proposed amendment should be filed in accordance with § 500.32(c)(1)(ii) of this chapter.

25. Amend § 552.5 by revising paragrpah (c), the first two sentences of paragraph (d)(2) and paragrah (e) to read as follows:

§ 552.5 Bylaws.

* * * * *

(c) A copy of all bylaws shall be filed with the Distrct Director.

(d) * * *

(2) *Appeal.* Denial of an application by a District Director pursuant to paragraph (d)(1) of this section may be appealed to the Office under the following procedures: Within 30 days after notification of the District Director's decision as provided herein, the applicant must file a request for review in accordance with § 500.32(c)(1)(ii) of this chapter. The appeal request should include the application for bylaw amendment as originally filed with the District Director, a copy of the District Director's letter denying approval of the application, and a statement of the specific reasons why the District Director's denial is contended to be erroneous. * * *

* * * * *

(e) *Filing requirements.* Application for preliminary approval of any amendment to the bylaws of a federal

stock association that is eligible to be processed under delegated authority pursuant to paragraph (d) of this section, shall be made by filing the proposed amendment in accordance with § 500.32(c)(5) of this chapter, along with a statement regarding eligibility for processing under delegated authority. Such statement should consist of a brief description of the proposed amendment and a statement that such amendment does not:

(1) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management; or

(2) Involve a significant issue of law or policy.

If a proposed amendment is not eligible to be processed under delegated authority pursuant to paragraph (d) of this section, then the proposed amendment should be filed in accordance with § 500.32(c)(1)(ii) of this chapter.

26. Amend § 552.6-3 by revising the first two sentences of paragraph (a) to read as follows:

§ 552.6-3 Certificates for shares and their transfer.

(a) *Certificates for shares.* Certificates representing shares of capital stock of the association shall be in such form as shall be determined by the board of directors and approved by the Office. Requests for Office approval shall be filed in accordance with § 500.32(c)(5) of this chapter. The certificates shall be signed by the chief executive officer or by any other officer of the association authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. * * *

* * * * *

27. Section 552.10 is revised to read as follows:

§ 552.10 Annual reports to stockholders.

A Federal stock association not wholly-owned by a holding company shall, within ninety days after the end of its fiscal year, mail to each of its stockholders entitled to vote at its annual meeting an annual report containing financial statements which satisfy the requirements of rule 14a-3 under the Securities Exchange Act of 1934. (17 CFR 204.14a-3) Concurrently with such mailing a certification of such mailing signed by the chairman of the board, the president or a vice president of the association, together with copies of the report, shall be transmitted by the association in accordance with § 500.32(c(5) of this chapter.

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

28. The authority citation for part 563 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

29. Section 563.1(b) is revised to read as follows:

§ 563.1 Form of account.

* * * * *

(b) *Filing.* Prior to issuing any form of account, a savings association shall file with the Office:

(1) The form of account; and

(2) An opinion of its legal counsel that the form complies with the requirements of applicable law and regulations and the association's charter and bylaws.

If the account is issued in negotiable instrument form, the opinion must state expressly that the form so qualifies under applicable law. Such filings shall be made in accordance with § 500.32(c)(5) of this chapter. The savings association shall retain a copy of the opinion for as long as accounts in that form are outstanding. The requirements of this paragraph (b) shall not apply if a savings association issues a form of insured account that has been approved by the Office for use by savings associations.

30. Amend § 560.10 by revising the introductory text of paragraph (c)(1) to read as follows:

§ 563.10 Earnings-based accounts.

* * * * *

(c) * * *

(1) An application submitted pursuant to this section shall be submitted in accordance with § 500.32(c)(5) of this chapter. The District Director may grant permission to a savings association to issue earnings-based accounts in an amount of up to 20 percent of the savings association's assets, upon consideration by the District Director of the following factors:

* * * * *

31. Amend § 563.22 by revising paragraphs (c)(2), (d)(1), and (f)(1) to read as follows:

§ 563.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

* * * * *

(c) * * *

(2) Application for approval under this section shall be submitted in accordance with § 500.32(c)(3) of this chapter, shall be upon forms prescribed by the Office and shall contain such information as the Office may require, including appropriate information regarding the fairness and legal, economic, managerial, financial, disclosure, accounting and tax aspects of the transaction; provided that, where the filing party believes its application is eligible to be processed under paragraphs (e)(1) or (e)(2) of this section, the filing party shall submit its application in accordance with § 500.32(c)(5) of this chapter, and it shall also submit a brief summary of the proposed transaction and an affirmative statement that none of the factors specified in paragraph (e) of this section which would preclude automatic approval or action under delegated authority are present.

(d) * * *

(1) Constituent associations in a transaction subject to paragraph (a) of this section shall file in accordance with § 500.32(c)(7) of this chapter.

* * * * *

(f) * * *

(1) Within 20 days after notification of the decision by the District Director or Senior Deputy Director for Supervision Operations, as the case may be, the applicant may appeal the decision. Such appeals should be filed in accordance with § 500.32(c)(2)(ii) of this chapter. The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the denial is contended to be erroneous.

* * * * *

32. Amend § 563.38 by revising the first two sentences of paragraph (b) to read as follows:

§ 563.38 Salvage power of savings association to assist service corporation.

* * * * *

(b) *Applications for approval.* Each application by a savings association to the Office for its approval to make any such contribution, loan, investment, guarantee, or assumption of liability shall establish, to the satisfaction of the Office, in a written statement, that action it proposes is for the protection of the savings association's investment and is consistent with safe, sound, and economical home financing. Such applications shall be filed in accordance with § 500.32(c)(2)(ii) of this chapter. The application shall describe and discuss alternative solutions to the service corporation's financial problem including solutions which do not involve

increased investment by the savings association, and contain such other information as the Office may require.

* * *

33. Section 563.41(b) is revised to read as follows:

§ 563.41 Restrictions on real property transactions with affiliates and affiliated persons.

* * * * *

(b) *Restrictions.* No savings association or subsidiary thereof may, directly or indirectly, purchase or lease from, jointly own with, or sell or lease to, an affiliated person of the association any interest in real or personal property unless the transaction determined by the District Director to be fair to, and in the best interest of, the savings association or subsidiary. Such applications shall be filed in accordance with § 500.32(c)(5) of this chapter.

* * * * *

34. Section 563.74(e) is revised to read as follows:

§ 563.74 Mutual capital certificates.

* * * * *

(e) *Filing requirements.* The application for issuance of mutual capital certificates shall be publicly filed with the Office in accordance with § 500.32(c)(2)(i) of this chapter.

* * * * *

35. Section 563.75(e) is revised to read as follows:

§ 563.75 Mandatorily redeemable preferred stock.

* * * * *

(e) *Filing of application.* The application for approval of the issuance of mandatorily redeemable preferred stock under this section shall be filed with the Office in accordance with § 500.32(c)(2)(ii) of this chapter.

* * * * *

36. Amend § 563.80 by amending paragraph (e)(2) to insert the following as the second sentence:

§ 563.80 Borrowing limitations.

* * * * *

(e) * * *

(2) * * * Such filings shall be filed in accordance with § 500.32(c)(5) of this chapter. * * *

* * * * *

37. Amend § 563.81 by revising paragraph (e), and the first four sentences of paragraph (j) to read as follows:

§ 563.81 Issuance of subordinated debt securities.

* * * * *

(e) *Filing of application.* the application for approval of issuance of subordinated debt securities under this section shall be filed in accordance with § 500.32(c)(5) of this chapter *provided* the application is eligible for approval by the District Director under § 563.81(i); otherwise the application shall be filed in accordance with § 500.32(c)(3) of this chapter.

* * * * *

(j) *Appeals.* Denial of an application by a District Director pursuant to paragraph (i) of this section or the inclusion of any non-standard condition(s) not set forth in paragraph (k) of this section in the approval of an application may be appealed under the following procedures: Within 30 days after notification of the District Director's decision as provided for in this section, the applicant must file a written request for review stating the applicant's desire to appeal the District Director's decision. The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the District Director's denial is contended to be erroneous. The application shall be filed with the Office in accordance with § 500.32(c)(2)(ii) of this chapter.* * *

38. Section 563.98(g)(1) is revised to read as follows:

§ 563.98 Regulation of equity risk investment in equity securities, real estate, service corporations, operating subsidiaries, certain land loans, and nonresidential construction loans.

* * * * *

(g) *Exceptions.* (1) Except as provided in paragraph (g)(6) of this section, a savings association seeking to make equity risk investments in an amount, at a threshold level, or of a type other than as generally permitted by this section shall file an application in accordance with § 500.32(c)(1)(i) of this chapter and, if it is state-chartered, shall send a copy of the application to its state supervisor. Within 10 days of the filing of such an application or any additional information, the District Director shall notify the applicant in writing either that all information required under paragraph (g)(2) of this section has been filed or that additional specified information must be filed. If the District Director does not act on an application within 30 days of the date of written notice that all required information has been filed, such application shall be deemed to be approved.

* * * * *

39. Amend § 563.131 by revising the introductory text of paragraph (c) to read as follows:

§ 563.131 Liability growth.

* * * * *

(c) To obtain the prior written approval from its District Director a savings association shall submit a written growth plan in accordance with § 500.32(c)(5) of this chapter. A growth plan shall cover a period of time not to exceed 1 year and shall include the following information:

* * * * *

40. Amend § 563.132 by revising the introductory text of paragraph (c)(1), and paragraphs (c)(3) and (c)(5) to read as follows:

§ 563.132 Securities issued through subsidiaries.

* * * * *

(c) * * *

(1) Prior to the establishment of any finance subsidiary, the transfer of any additional assets to an existing finance subsidiary, or the issuance of securities through a subsidiary as described in paragraph (a)(1)(ii) of this section, the board of directors of the parent savings associations, or a duly authorized executive committee thereof, shall submit written notification in accordance with § 500.32(c)(5) of this chapter, specifying:

* * * * *

(3) Any savings association that fails to meet its capital requirement as provided in § 567.2 of this subchapter, or that is operating under any supervisory agreement, shall not establish a finance subsidiary, transfer assets to an existing finance subsidiary, or issue additional securities through a subsidiary described in paragraph (a)(1)(ii) of this section without the prior written approval of the savings association's District Director. The board of directors of the association, or an authorized executive committee thereof, shall submit a written application containing the information specified in paragraph (c)(1) of this section in accordance with § 500.32 (c)(1)(i) of this chapter, as well as any additional information required by the District Director.

* * * * *

(5) The District Director shall approve the application of a savings association subject to the requirement of paragraph (c)(3) of this section, unless he or she finds that the establishment and operation of a finance subsidiary, the transfer of assets to an existing finance subsidiary, or the issuance of an additional amount of securities issued through a subsidiary described in paragraph (a)(1)(ii) of this section is likely to affect adversely the financial condition or the safe and sound

operation of the parent institution. An adverse determination made by the District Director may be challenged by filing, within 30 days of receipt of written disapproval, a petition for reconsideration with the Office. The association shall file its petition in accordance with § 500.32(c)(2)(ii) of this chapter. The Office shall grant or deny a petition for reconsideration filed pursuant to paragraph (c)(3) of this section in writing within thirty days of receipt. If the Office does not deny such a petition within the prescribed time, the Office shall be deemed to have granted the petition for reconsideration.

41. Amend § 563.233 by revising paragraphs (e)(1) and (e)(3)(i), and the first two sentences of paragraph (e)(4) to read as follows:

§ 563.233 Accounting principles and procedures.

* * * * *

(e)(1) A savings association seeking to delay its compliance with the uniform accounting standards set forth in this § 563.233 or § 567.1 of this subchapter shall file a plan in accordance with § 500.32(c)(1)(i) of this chapter.

* * * * *

(3)(i) The District Director shall act on such plans in accordance with the guidelines set forth at § 571.12 of this subchapter.

* * * * *

(4) In the event that the District Director disapproves a plan for delayed compliance in whole or in part, the savings association may appeal the disapproval to the Office within thirty days of the disapproval. Such appeal shall be filed in accordance with § 500.32(c)(2)(ii) of this chapter. The Office shall act on such appeal in accordance with the guidelines set forth at § 572.12 of this subchapter. * * *

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

42. The authority citation for part 563b continues to read as follows:

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); secs. 3, 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c, 1–n, w).

43. Section 563b.3(i)(3)(i) is revised to read as follows:

§ 563b.3 General principles for conversions.

* * * * *

(i) *Acquisition of the securities of converting and converted savings associations*—* * *

* * * * *

(3) *Prohibition on offers to acquire and acquisitions of stock for three years following conversion.* (i) For a period of three years following the date of the completion of the conversion, no person shall, directly or indirectly, offer to acquire or acquire the beneficial ownership of more than ten percent of any class of an equity security of a savings association converted in accordance with the provisions of this part 563b, without the prior written approval of the Office. Where any person, directly or indirectly, acquires beneficial ownership of more than ten percent of any class of any equity security of a savings association converted in accordance with part 563b, without the prior wirtten approval of the Office as required by this section, the securities beneficially owned by such person in excess of ten percent shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matter submitted to the stockholders for a vote. For the purposes of this section, a person shall be deemed to have acquired beneficial ownership of more than ten percent (10%) of a class of equity security of a savings association where the person holds any combination of stock or revocable or irrevocable proxies of the association under circumstances that give rise to a conclusive control determination or rebuttable control determination under §§ 574.4(a) and 574.4(b) of this chapter. All applications for approval of the Office under this paragraph shall be filed in accordance with § 500.32(c)(2)(ii) of this chapter.

* * * * *

44. Section 563b.28(a) is revised to read as follows:

§ 563b.28 Procedural requirements.

(a) *Filing of voluntary supervisory conversion application.* A savings association seeking to convert pursuant to this subpart shall file, in accordance with § 500.32(c)(2)(ii) of this chapter, the information and documents specified in § 563b.27 of this subpart.

* * * * *

PART 563f—MANAGEMENT OFFICIAL INTERLOCKS

45. The authority citation for part 563f continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 201, 92 Stat. 3672, as amended (12 U.S.C. 3201 *et seq.*).

46. Amend § 563f.7 by revising the last two sentences to read as follows:

§ 563f.7 Delegation of authority to grant exemptions and extensions of time.

* * * Except as noted below, applications made pursuant to this section should be submitted in accordance with § 500.32(c)(5) of this chapter to the District Director for the District that has supervisory responsibility over the depository institution or depository holding company wherein the management official is, or would be in a prohibited management interlock position. Applications made pursuant to §§ 563f.4(a)(7), 563f.4(a)(8), and 563f.4(a)(9) of this part shall be filed in accordance with § 500.32(c)(3) of this chapter.

PART 567—CAPITAL

47. The authority citation for part 567 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a).

48. Amend § 567.3 by revising the introductory text of paragraph (d)(2)(i) to read as follows:

§ 567.3 Individual minimum capital requirements.

* * * * *

(d) * * *

(2) * * *

(i) The response shall include any information that the savings association wants the District Director to consider in deciding whether to establish or to amend an individual minimum capital requirement for the savings association, what the individual capital requirement should be, and, if applicable, what compliance schedule is appropriate for achieving the required capital level. The responses of the savings association and appropriate state supervisor must be in writing and must be delivered to the District Director within 30 days after the date on which the notification was received. Such response should be filed in accordance with § 500.32(c)(1)(i) of this chapter. The District Director may extend the time period for good cause. The time period for response by the insured savings association may be shortened for good cause:

* * * * *

49. Amend § 567.4 by revising the introductory text of paragraph (a)(3)(i) to read as follows:

§ 567.4 Capital directives.

(a) * * *

(3) *Response to notice of intent.* (i) A savings association may respond to the notice of intent by submitting its own compliance plan, or may propose an alternative plan. The response should also include any information that the savings association wishes Enforcement to consider and the Senior Deputy Director for Supervision Operations to review in deciding whether to recommend that the Office issue a capital directive. The appropriate state supervisor may also submit a response. These responses must be in writing and be delivered within 30 days after the receipt of the notices. Such responses shall be submitted in accordance with § 500.32(c)(2)(iii) of this chapter. In its discretion, Enforcement may extend the time period for the response for good cause. Enforcement may, for good cause, shorten the 30-day time period for response by the insured savings assocation:

* * * * *

PART 574—ACQUISITION OF CONTROL OF SAVINGS ASSOCIATIONS

50. The authority citation for part 574 continues to read as follows:

Authority: Sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 2(7), 64 Stat. 876, as amended (12 U.S.C. 1817).

51. Amend § 574.6 by revising paragraph (b)(1)(i), the first three sentences of (b)(1)(ii), paragraph (b)(1)(iv), paragraphs (b)(2) through (b)(6), the introductory text of paragraph (d)(2) and first two paragraphs of the notice of filing in paragraph (d)(2), and paragraph (d)(3) to read as follows:

§ 574.6 Procedural requirements.

* * * * *

(b) * * *

(1) * * *

(i) Complete copies including exhibits and all other pertinent documents of applications, notices, and rebuttal submissions that are not eligible to be processed under delegated authority pursuant to § 574.9(a) of this part shall be filed in accordance with § 500.32(c)(4) of this chapter.

(ii) Complete copies including exhibits and all other pertinent documents of applications, notices, and rebuttal submissions eligible to be processed under delegated authority pursuant to § 574.9(a) of this part shall be filed in accordance with § 500.32(c)(1)(iii) of this chapter. Each copy shall include a summary of the proposed transaction including an explanation of why the application, notice, or rebuttal submission may be processed under delegated authority, and an affirmative representation that none of the conditions specified in § 574.9(a) of this part that would preclude action under delegated authority are present. * * *

* * * * *

(iv) Any acquiror filing a notice pursuant to § 574.3(b) of this part shall file additional copies of the notice with the District Director in accordance with § 500.32(c)(8) of this chapter. Any acquiror filing a notice pursuant to § 574.3(b) of this part with respect to acquisition of a state-chartered association shall file a copy of the notice for the State Supervisor, pursuant to § 500.32(c)(8) of this chapter.

* * * * *

(2) *H-(e)4. Information filing.* Any information filing required to be made to claim that a reorganization is exempt from prior written approval of the Office under § 574.3(c)(1)(ii) shall be filed in accordance with § 500.32(c)(3) of this chapter. Such filing shall be clearly labeled "H-(e)4 Information Filing".

(3) *Safe-harbor filing.* In order to qualify for the safe harbor under § 574.4(f), a certification must be filed setting forth the information required by § 574.4(f). The certification shall be filed in accordance with § 500.32(c)(3) of this chapter.

(4) *Certification.* Certifications required by § 574.5(a) shall be filed in the accordance with § 500.32(c)(2)(ii) of this chapter.

(5) *Reports of loans.* Reports of loans required by § 574.5(b) shall be filed in the same manner as a certification filing under paragraph (b)(3) of this section.

(6) *Reports of pledges, hypothecations and liquidations.* Reports of pledges, hypothecations and liquidations required by § 574.3(c)(1)(iii) shall be filed in the same manner as a certification filing under paragraph (b)(3) of this section.

* * * * *

(d) * * *

(2) Notice published pursuant to paragraph (d) of this section shall be published in a manner that is conspicuous to the average reader and shall be made in substantially the following form:

NOTICE OF FILING OF APPLICATION OR NOTICE FOR ACQUISITION OF A SAVINGS ASSOCIATION

This is to inform the public that under § 574.3 of the Regulations of the Office of Thrift Supervision ("Office") for Acquisitions of Savings Associations [Acquiror] [has filed/intends to file] and [application/notice] with the Office, for permission to [acquire control of/purchase a qualified stock issuance of] savings association, located in [location], on [date, or intended date of filing].

Anyone may write in favor of or protest against the [application/notice] and in so doing may submit such information as he or she deems relevant. One copy of all submissions must be sent to the District Director, [give name and address] and in the case of applications or notices not delegated to the District Director under § 574.9(a), three copies must be sent to the Applications Filing Room, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552 within 20 calendar days of the filing of the [application/notice]. Up to an additional 20 calendar days to submit comments may be obtained upon a showing of good cause, if a written request is received by the District Director within the initial 20-day period.

* * * * *

(3) Promptly after publication, the acquiror shall transmit copies of each notice, and a publisher's affidavit of publication in the same manner as the original filing in accordance with § 574.6(b)(1).

* * * * *

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 584—REGULATED ACTIVITIES

52. The authority citation for part 584 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3 as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468).

53. Amend § 584.1 by revising paragraphs (a)(4), (b) and (e) to read as follows:

§ 584.1 Registration, examination and reports.

(a) * * *

(4) *General.* Registration statements, annual reports, and the H-(b)12 are to be filed with the Office in accordance with § 500.32(c)(2)(i) of this chapter. Copies of forms to be used in submitting registration statements, annual reports, and the H-(b)12 may be obtained from any District Director, or his or her designee.

(b) *Date of registration.* The date of registration of a savings and loan holding company shall be the date on which its registration statement is received by the District Director.

* * * * *

(e) *Reports.* Each savings and loan holding company and each subsidiary

thereof, other than a savings association, shall file in accordance with § 500.32(c)(6) of this chapter, such reports as may be required by the Office. Such reports shall be made under oath or otherwise, and shall be in such form and for such periods, as the Office may prescribe. Each report shall contain information concerning the operations of such savings and loan holding company and its subsidiaries as the Office may require.

* * * * *

54. Amend § 584.2–1 by revising the first three sentences of paragraph (c)(1) to read as follows:

§ 584.2–1 Prescribed services and activities of savings and loan holding companies.

* * * * *

(c) *Procedures for commencing services or activities.* (1) Before a savings and loan holding company subject to restrictions on its activities pursuant to § 584.2(b) of this part or a subsidiary thereof may commence performing or engaging in a service or activity prescribed by paragraph (b) of this section, either *de novo* or by an acquisition of a going concern, it shall file a notice of intent to do so in a form prescribed by the Office. The notice should be filed in accordance with § 500.32(e)(5) of this chapter. The activity or service may be commenced unless, before the close of the period specified immediately below, the District Director finds that the activity or service proposed would not be, under the circumstances, a proper incident to the operations of savings associations or would be detrimental to the interests of savings account holders therein, or unless the District Director, upon notice to the applicant, refers the application to the Director of the Office because the proposed activity presents a significant issue of law or policy. * * *

* * * * *

55. Amend § 584.2–2 by revising the first two sentences of paragraph (b) to read as follows:

§ 584.2–2 Permissible bank holding company activities of savings and loan holding companies.

* * * * *

(b) *Procedures for applications.* Applications to commence any activity prescribed under paragraph (a) of this section shall be filed in accordance with § 500.32(c)(1)(i) of this chapter. The District Director, or his or her designee, shall act upon such application pursuant to the guidelines set forth in § 571.12 of this chapter unless, the District Director, upon notice to the applicant, refers the application to the Director of the Office because it raises issues of law or policy inappropriate for resolution by the District Director. * * *

* * * * *

56. Amend § 584.5 by revising the first three sentences to read as follows:

§ 584.5 Advance notice of proposed dividend declarations.

No subsidiary savings association of a savings and loan holding company may declare any dividend on its guaranty, permanent, or other nonwithdrawal stock without first giving to the Office not less than 30 days' advance notice of the proposed declaration by its directors of any such dividend. Such notice shall be in the form prescribed by the Office in § 584.10(b), and shall be filed in accordance with § 500.32(c)(6) of this chapter. The 30-day notice period begins to run from the date of receipt of such notice by the District Director, who will promptly acknowledge such receipt in writing. * * *

Dated: January 31, 1990.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 90–7135 Filed 4–10–90; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 86F–0339]

Indirect Food Additives; Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one mixture with the optional use of magnesium nitrate as an antimicrobial agent for fillers, binders, pigment slurries, sizing solutions, and coating formulations employed in the manufacture of paper and paperboard for use in contact with food. This action is in response to a petition filed by Rohm & Haas Co.

DATES: Effective April 11, 1990; written objections and requests for a hearing by May 11, 1990.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 2, 1986 (51 FR 31176), FDA announced that a food additive petition (FAP 6B3947) had been filed by Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one mixture with magnesium nitrate as an antimicrobial agent for fillers, binders, pigment slurries, sizing solutions, and coating formulations employed in the manufacture of paper and paperboard for use in contact with food.

FDA, in its evaluation of the safety of this additive, reviewed the safety of both the additive and the starting materials used to manufacture the additive. The agency is not aware of any data that show 5-chloro-2-methyl-4-isothiazolin-3-one, 2-methyl-4-isothiazolin-3-one, or magnesium nitrate to be cancer causing chemicals. However, dimethylnitrosamine, which could be present as an impurity in the additive, has been shown to cause cancer in test animals. Residual amounts of reactants and byproducts, such as dimethylnitrosamine are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958). This definition of safety has been incorporated into FDA's

food additive regulations (21 CFR 170.3(i)). The anticancer or Delanny clause of the Food Additives Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic impurities but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use

FDA estimates that the petitioned use of 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one mixture with magnesium nitrate will result in extremely low levels of exposure to this additive. The agency calculated the estimated daily intake of 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one mixture (hereafter referred to as isothiazolones), with the optional use of magnesium nitrate, based on considerations such as the migration of the mixture under the most severe intended use conditions and the probable concentration of the mixture in the daily diet from food-contact articles that contain this substance. The agency estimated the daily intakes for the isothiazolones and the maximum requested level of the optional component magnesium nitrate to be 99 micrograms per person per day (32.9 parts per billion in the diet) each.

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2) and has not required such testing here. However, the agency has reviewed available data from subchronic rat and dog feeding studies and teratology studies with the isothiazolones. No adverse effects were observed in these studies. The agency also finds that the small increase in exposure from the optional use of magnesium nitrate in the additive will not significantly increase exposure to magnesium and nitrate ions in the diet. On the basis of this information and of the low level of exposure to the additive, the agency concludes that there is an adequate margin of safety for the proposed use of the additive.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of risk presented by the carcinogenic chemical dimethylnitrosamine, which may be present as an impurity in the additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see, e.g., 49 FR 13018 and 13019; April 2, 1984). The risk evaluation of the carcinogenic impurity dimethylnitrosamine has two aspects:

(1) Assessment of the worst-case exposure to the impurity from the proposed use of the additive, and

(2) Extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. Dimethylnitrosamine

Based on the fraction of the daily diet that may be in contact with articles containing 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one mixture with magnesium nitrate and on the level of dimethylnitrosamine that may be present in the additive, FDA estimated the hypothetical worst-case exposure to dimethylnitrosamine from the petitioned use of this additive to be 0.99 nanograms per person per day (Ref. 3). The agency used data from a carcinogenesis bioassay on dimethylnitrosamine (Ref. 4) to estimate the upper-bound level of lifetime human risk from the exposure to this chemical resulting from the proposed use of 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one mixture with magnesium nitrate. The results of the bioassay on dimethylnitrosamine demonstrated that the material was carcinogenic for male and female rats under the conditions of the study, causing liver tumors in the rats.

The Center for Food Safety and Applied Nutrition's Quantitative Risk Assessment Committee (the committee) reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on dimethylnitrosamine.

The committee further concluded that the dimethylnitrosamine bioassay provided the appropriate basis on which to calculate an estimate of the upper-bound level of lifetime human cancer risk from potential exposure to dimethylnitrosamine stemming from the proposed use of 5-chloro-2-methyl-5-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one mixture with the optional use of magnesium nitrate.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the additive.

Based on a worst-case exposure of 0.99 nanogram per person per day, FDA estimates that the upper-bound limit of individual lifetime risk from potential exposure to dimethylnitrosamine from the proposed use of 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one mixture with the optional use of magnesium nitrate is 3.5×10^{-8} or less than 1 in 28 million (Ref. 5). Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to

dimethylnitrosamine is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to dimethylnitrosamine that might result from the proposed use of 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one with the optional use of magnesium nitrate.

B. Need for Specifications

The agency has carefully considered whether a specification is necessary to control the amount of dimethylnitrosamine in the food additive. The agency finds that a specification is not necessary for the following reasons:

(1) Because of the low levels at which dimethylnitrosamine may be expected to remain as an impurity following production of the additive, the agency would not expect this impurity to become a component of food at other than extremely small levels.

(2) The upper-bound limit of lifetime risk from exposure to this impurity, even under worst-case assumptions, is very low, less than 1 in 28 million.

C. Conclusion on Safety

FDA has evaluated the available and other relevant material and concludes that the proposed use for the additive is safe, and that 21 CFR 176.170 should be amended by revising the table in paragraph (b)(2) as set forth below. Additionally, in revising the table in § 176.170(b)(2), FDA is editorially correcting the CAS Registry number for magnesium nitrate to read "CAS Reg. No. 10377–60–3" in place of "CAS Reg. No. 10377–6–3" under the heading "List of substances".

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

III. Objections

Any person who will be adversely affected by this regulation may at any time on or before May 11, 1990, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m and 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogenicity Testing Programs" in "Food Safety: Where Are We?," Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59, July 1979.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology" in "Chemical Safety Regulations and Compliance," edited by F. Homburger and J. K. Marquis, S. Karger, New York, pp. 24–33, 1985.

3. Memorandum dated September 4, 1986, from Regulatory Food Chemistry Branch to Indirect Additive Branch, "FAP 6B3947—Rohm & Haas CO., 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one mixture with magnesium nitrate as an antimicrobial agent used in the manufacture of paper and paperboard."

4. Peto, R., et al., IARC Science Publications, 57:627–665, 1984.

5. Memorandum dated November 15, 1989, Report of Quantitative Risk Assessment Committee, "Upperbound Risks from Dimethylnitrosamine (DMN) in FAP's 5B3835 and 6B3947."

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 376).

2. Section 176.170 is amended in the table in paragraph (b)(2) by revising the entry for "5-Chloro-2-methyl-4-isothiazolin-3-one * * *" under the headings "List of substances" and "Limitations" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(b) * * *

(2) * * *

List of substances	Limitations
* * * * *	
5-Chloro-2-methyl-4-isothiazolin-3-one (CAS Reg. No. 26172-55-4) and 2-methyl-4-isothiazolin-3-one (CAS Reg. No. 2682-20-4) mixture at a ratio of 3 parts to 1 part, manufactured from methyl-3-mercaptopropionate (CAS Reg. No. 2935-90-2). The mixture may contain magnesium nitrate (CAS Reg. No. 10377-60-3) at a concentration equivalent to the isothiazolone active ingredients (weight/weight).	For use only: 1. As an antimicrobial agent for polymer latex emulsions in paper coatings at a level not to exceed 50 parts per million (based on isothiazolone active ingredients) in the coating formulation. 2. As an antimicrobial agent for finished coating formulations and for additives used in the manufacture of paper and paperboard including fillers, binders, pigment slurries, and sizing solutions at a level not to exceed 25 parts per million (based on isothiazolone active ingredients) in the coating formulations and additives.
* * * * *	

* * * * *

Dated: April 4, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–8360 Filed 4–10–90; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 178

[Docket No. 88F–0139]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of tris(2, 4-di-*tert*-butylphenyl)phosphite as an antioxidant and thermal stabilizer for poly-l-butene resins and butene/ethylene copolymers intended for use in contact with food. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective April 11, 1990; written objections and requests for a hearing by May 11, 1990.

ADDRESSES: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 9, 1988 (53 FR 21728), FDA announced that a food additive petition (FAP 8B4077) had been filed by Ciba-Ceigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of tris(2,4-di-*tert*-butylphenyl)phosphite as an antioxidant and thermal stabilizer for poly-l-butene resins and butene/ethylene copolymers intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended in 21 CFR 178.2010(b) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before May 11, 1990, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.2010 is amended in the table in paragraph (b), for the entry "Tris(2,4-di-*tert*-butylphenyl)phosphite * * *", numerically adding new item "23," under the heading "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
• • • • •	
	For use only:
	* * *
Tris(2,4-di-*tert*-butylphenyl)phosphite (CAS Reg. No. 31570–04–4).	23. At levels not to exceed 0.15 percent by weight of poly-1-butene resins and butene/ethylene copolymers complying with § 177.1570 of this chapter: *Provided*, that the finished polymer contacts food only under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter.
• • • • •	

Dated: March 30, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90–8359 Filed 4–10–90; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[T.D. 8275]

RIN 1545–AJ05

Returns Relating to Persons Receiving Contracts From Federal Executive Agencies

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were

published in the Federal Register on Wednesday, December 6, 1989 (54 FR 50367) as Treasury Decision 8275. The rules related to compliance with the new reporting requirements imposed by section 6050M for returns relating to persons receiving contracts from Federal executive agencies.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley at 202-566-3367 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections relate to section 6050M, which was added to the Internal Revenue Code by the Tax Reform Act of 1986.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations which were the subject of FR Doc. 89-28396, is corrected as follows:

Para. 1. On page 50369, in the preamble, first column, line 10, the language "(including into (or treated as entered" is corrected to read "(including their contract actions treated as new contracts entered into (or treated as entered".

§ 1.5060M [Amended]

Par. 2. On page 50370, second column, § 1.5060M-1(b)(2)(iv) should read:

* * * * *

(iv) *Certain schedule contracts.* For purposes of this section, any of the following contracts entered into on behalf of one or more Federal executive agencies is not a "contract" to be reported by the General Services Administration or the Department of Veteran's Affairs at the time of execution:

(A) A Federal Supply Schedule Contract entered into by the General Services Administration,

(B) An Automated Data Processing Schedule Contract entered into by the General Services Administration, or

(C) A schedule contract entered into by the Department of Veteran's Affairs.

Instead, an order placed by a Federal executive agency, including the General Services Administration or the Department of Veteran's Affairs, under such a schedule contract is a "contract" for purposes of this section.

§ 1.6050M [Amended]

Par. 3. On page 50371, second column, line 4 of § 1.6050M-1(d)(5)(i)(A) which reads "26 CFR 1.6050M-1(d)(5), to make, on the" should read "26 CFR 1.6050M-1(d)(5) to make, on the".

Par. 4. On page 50372, second column, immediately following the text of § 301.6050M-1, the language "Approved: November 6, 1989. Lawrence B. Gibbs, Commissioner of Internal Revenue." should read as follows:

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: November 6, 1989.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 90-8135 Filed 4-10-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-90-02]

Drawbridge Operation Regulations; Lake Pontchartrain, LA

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule; revocation.

SUMMARY: This amendment revokes the regulations for the Southern Railway Systems south drawspan on Lake Pontchartrain, in Orleans and St. Tammany Parishes, Louisiana, because the drawspan has been replaced with a fixed span. Notice and public procedure have been omitted from this action due to the conversion of the span.

EFFECTIVE DATE: This regulation becomes effective on May 11, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589-2065.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely revokes regulations that are now meaningless because they pertain to a drawbridge span that no longer exists. Consequently, this action is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, and because this action will not have a significant impact on a substantial number of small entities, this rulemaking is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)).

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and Commander J.A. Unzicker, project attorney.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.467(a) is revised to read as follows:

§ 117.467 Lake Pontchartrain

(a) The south draw of the S11 bridge near New Orleans shall open on signal if at least 48 hours notice is given. In case of emergency, the draw shall open within 12 hours and shall be kept in condition for immediate operation until the emergency is over.

* * * * *

Dated: March 22, 1990.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 90-8328 Filed 4-10-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AC54

Procedural Due Process

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations on procedural due process for VA claimants and beneficiaries and the eligibility criteria for retroactive awards based on liberalizing laws or administrative issues. These amendments are necessary because of the need for more specificity in VA regulations on procedural due process and because of a

VA General Counsel opinion on eligibility for retroactive benefits. The effect of these amendments will be to improve and more clearly define procedural due process rights and retroactive eligibility criteria.

EFFECTIVE DATE: May 11, 1990.

FOR FURTHER INFORMATION CONTACT: Don England, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: On pages 37797 through 37801 of the Federal Register of September 28, 1988, VA published proposed amendments to title 38, Code of Federal Regulations, on procedural due process and the eligibility criteria for retroactive awards based on liberalizing laws or administrative issues. Interested persons were given until October 28, 1988, to submit comments, suggestions, or objections to the proposed rules.

VA received comments on the proposed rules from the Vietnam Veterans of America and the Puerto Rico Public Advocate for Veterans Affairs. The comments and recommendations with respect to each proposed amendment have been summarized and are set forth below together with the actions and/or responses of VA.

Comments and Recommendations

Section 3.103

One commenter recommended that the proposed regulation be amended to state that required notices of VA proposed and final actions be sent to a claimant at his or her last known address.

VA does not agree that inclusion of this wording in the regulation would provide any additional benefit for VA claimants with regard to their general right to notice of decisions on their claims. Barring an error or a delay in processing a notification of a change of address, all written communications to a claimant are sent to his or her last known address. Insertion of this requirement in VA regulations would not lessen the number of errors or reduce delays. For this reason no changes are being made based on this comment. Since additional protection against erroneous deprivation of benefits would not be afforded to claimants through adoption of this suggestion, the Government's burden in implementing the suggestion is not being discussed.

Both commenters recommended a requirement for VA to furnish a copy of any notice to a claimant to the properly designated representative of the claimant.

The regulatory requirement for furnishing copies of notices to designated representatives is contained in 38 CFR 1.525(d), and inclusion in this section would be redundant. Therefore, no change is being made based on these comments.

One commenter recommended that this section include a requirement that a claimant and his or her properly designated representative be provided notification of submissions from VA regional offices to VA Central Office (VACO) for advisory opinions, administrative reviews, administrative appeals, legal opinions, and medical opinions from VA health care professionals, and that copies of such submissions and resulting replies be routinely furnished to the claimants and representatives prior to decisions being rendered. The commenter states the belief that advisory opinions from the Director, Compensation and Pension Service, are binding on regional office rating boards and Hearing Officers, and that an opportunity to examine and rebut such opinions prior to the decision is required in order to adequately provide procedural due process.

The majority of claims processed in VA regional offices are of a routine nature involving relatively simple issues of entitlement, but some claims involve extremely complex and/or novel issues and require application of a variety of laws and regulations. In some cases, due to circumstances arising from the complexity of an issue, a regional office may request an advisory opinion from VACO, a medical opinion, and/or a legal opinion. Administrative reviews and administrative appeals are actions which occur following a decision by a regional office, and therefore, have no relationship to procedural due process within the context of this section.

Advisory opinions are advisory only and, while such opinions should be given considerable weight by regional offices in reaching a determination on a particular claim, are not binding on the regional offices. The same is true of medical opinions from VA health care professionals. There is no issue of a lack of opportunity to be heard by the decisionmaker where an advisory or medical opinion has been issued because the decision making authority is retained by the regional office. VA does not believe that due process includes a requirement that such nonbinding advice be communicated to claimants and/or beneficiaries prior to an initial, appealable decision being made. VA believes the appellate process, which provides Statements of the Case detailing the basis and rationale for a denial of benefits, affords claimants and/or beneficiaries ample opportunity to argue their views.

Information from, or copies of, these opinions or other evidence considered by VA in reaching decisions may be made available to claimants and/or duly authorized agents or representatives under the authority of 38 CFR 1.500 et seq. These regulations also apply to requests for copies of legal opinions, which are an important part of the VA decision making process, and are rendered based on facts of record at the time of the opinion. Legal opinions may be challenged following regional office decisions as part of the appellate process or through the submission of additional evidence.

Regulatory requirements for providing detailed reasons for decisions and additional procedural safeguards are also being adopted with publication of this notice concerning proposed benefit reductions. VA finds these regulatory provisions to be adequate to guard against erroneous deprivation of benefits. Marginal gains in that regard, if any, afforded to claimants by the commenter's suggestions would be far outweighed by the costs of implementation to the Government. Such costs would include employee time required to copy and mail documents to claimants and beneficiaries. In addition, decisions would be delayed pending reply or expiration of a period allowed for reply. For these reasons the recommended changes are not being adopted.

One commenter recommended requiring that VA include citations of all applicable regulations in notices of proposed or final decisions, and that the reasons for the proposed or final decision include a statement of the exact change in the claimant's circumstances on which the change is proposed or based.

VA does not agree that the recommended changes would provide any additional benefit for VA claimants with regard to their general right to notice of decisions on their claims. The recommended changes would require VA to include detailed statements and regulatory citations on favorable as well as unfavorable decisions. Clearly, there is no risk of erroneous deprivation with favorable decisions, and the suggested changes provide no additional protection to successful claimants while being extremely burdensome on the Government in terms of the impact on automated claims processing and timeliness of decisions. Implementation

of the suggested changes would virtually eliminate current ability to notify claimants and beneficiaries through our current means of automated data processing and would require transcription of dictated notifications of decisions on all disability claims.

The same burden on the Government would be experienced with unfavorable decisions while little, if any, additional protection against erroneous deprivation of benefits would be afforded to claimants by the recommended changes. Under current rules unsuccessful claimants are provided with a statement of the reasons for the decision which is sufficient to allow the claimant to decide whether to challenge the decision through the VA appellate process. If a notice of disagreement is filed within a year of notification of the adverse decision, a Statement of the Case is provided to the claimant which sets forth the detailed reasons for the decision and the applicable regulatory citations. The recommended changes would essentially require that a Statement of the Case be provided along with every decision on every claim. VA believes that the requirements of due process are more than satisfied when such a procedure is followed only with respect to challenged decisions. Detailed reasons and additional procedural safeguards are also being adopted with publication of this notice concerning proposed benefit reductions. For these reasons the recommended changes as to content of notices are not being adopted.

Also recommended was the addition of a requirement for VA to provide notice of the availability for review of VA regulations, procedural manuals, instructions and guidelines and a requirement for VA to maintain public reading facilities for this purpose at all its offices.

Notice of availability for review of the publications mentioned is contained in 38 CFR 1.552, with regulatory requirement for maintenance of public reading facilities contained in paragraph (a) of that section. Therefore, inclusion in this section would be redundant and no change is being made based on these comments.

One commenter stated that the introductory phrase "Except as otherwise provided" appearing in the proposed revision of § 3.103(b)(2) is confusing, and a reference to the exceptions should be included.

While we do not agree that the cited phrase is confusing or that the suggested change provides additional procedural safeguards, we do acknowledge that there is no burden on the Government in making such a change. Since the recommended change will eliminate a perception of confusion, we have agreed to the recommendation and have inserted a reference to the exceptions in the final rule.

One commenter made recommendations regarding each of the first three exceptions to the requirement for pretermination/reduction notifications as proposed in § 3.103(b)(3). It was recommended that the exception for benefit checks returned as undeliverable be for application only following reasonable efforts to obtain a more current address through a search of all filing systems maintained by VA.

Upon further review of existing rules regarding the circumstances covered by this exception, the exception has been deleted from the final rule and the remaining subparagraphs renumbered accordingly. The provisions of 38 CFR 1.710 specify that VA benefits may not be denied on the basis of lack of a mailing address and state actions to be taken upon return of benefit payments which are undeliverable to the address of record in VA.

The same commenter took exception to VA not being required to furnish pretermination/reduction notices to claimants where the adverse action resulted from information provided by the claimant with what the commenter called a presumption by VA of the claimant's knowledge that such information would be used to calculate entitlement to benefits. The commenter's concern arose because of alleged small print and confusing wording used by VA to notify claimants of their responsibilities while receiving VA benefits. The commenter did not feel that furnishing of such notices should result in a presumption of the claimant's knowledge by VA.

VA administers several disability programs to millions of beneficiaries throughout the world. We realize that laws and regulations governing the payment of benefits by VA are, in some cases, quite complex. This proposed exception is limited to information which is numerical in nature such as changes in income and number of dependents. We attempt to communicate these relatively simple rules to the recipients of VA benefits through written comments and instructions which we feel adequately explain their responsibilities under the law and regulations. Evidence of record which establishes that claimants have been given such notice should, in our view, result in those claimants being presumed to have knowledge of the effects of certain numerical changes in circumstances which he or she reports to VA.

VA is aware that, due to individual circumstances, this presumption of knowledge may not be valid for all beneficiaries. We further realize that the proposed exception is not so precise as to preclude any possibility of erroneous deprivation of benefits through its implementation. VA is, however, of the opinion that the exception as proposed, when applied to the generality of cases, meets the burden of the Government with regard to due process procedures. To implement the suggested change would be to assume that written instructions furnished by VA regarding the information covered in this exception is not understood by many beneficiaries. VA feels this to be an illogical assumption. In addition, the elimination of this exception would be extremely burdensome on the Government in terms of the impact on human resources, automated claims processing, and timeliness of decisions. For these reasons, the recommended changes in this exception based on information provided by claimants or beneficiaries are not being adopted.

It was also recommended that the proposed exception regarding failure to return required eligibility verification reports only apply when VA can produce a dated file copy of a letter of transmittal showing a report was mailed to the beneficiary's last known address, with a copy to the address of any properly designated representative.

VA does not agree with this recommendation because we feel elimination of the proposed exception would provide little, if any, protection against erroneous deprivation of benefits. Eligibility verification reports are self-contained reporting forms which are furnished to claimants for reporting of information required to confirm continuing entitlement to VA benefits being paid at the time the report is requested. The forms used for reporting are produced and mailed through the same VA automated data processing system used to issue benefit payments to beneficiaries at their last known address. A computer control for confirmation of return of the form is established at the time the form is mailed. Cover letters are generally not required for mailing and therefore, no file copy is available.

VA finds the current procedures adequate to guard against erroneous deprivation of benefits in the vast majority of cases. Additional protections, if any, afforded to claimants by the commenter's suggestion would be far outweighed by the costs of implementation to the Government. Such costs would include purchase of

additional printing equipment for printing of file copies of letters and human resources to file these copies in individual files of beneficiaries. For these reasons the recommended changes are not being adopted.

One commenter recommended that those claimants who are unemployed and/or in receipt of VA pension benefits, or raising issues regarding VA pension eligibility, be reimbursed for travel expenses to and from a hearing site in the same manner and at the same rate as for travel in connection with physical examinations for disability evaluations. The commenter further recommended that the proposed right to a hearing shown in § 3.103(c) be amended to include a claimant's right to a hearing at any VA facility, or through telephonic or two-way televised arrangements in certain circumstances.

It is the duty of VA to make personal hearings reasonably available. Current rules provide such availability in facilities located at each of the VA regional offices having adjudicative functions. Hearings are held so that claimants and beneficiaries have an opportunity to present oral testimony or other evidence in support of their claims. Such evidence can also be presented to VA through submission of affidavits or other written documents.

The current rules regarding personal hearings, as well as the availability of alternative methods for submission of evidence, meet the Government's responsibility of providing procedures which guard against erroneous deprivation of benefits to claimants and beneficiaries.

In order to implement the suggested changes, VA would be required to reimburse travel expenses, provide "roving" hearing officials, purchase equipment capable of offering recorded two-way televised or telephonic communications, and hire personnel with the ability to operate and maintain such equipment. VA is of the opinion that this added burden on the Government would not be justified by the marginal gains, if any, which might be realized in guarding against erroneous deprivation of benefits. For these reasons the recommended changes are not being adopted.

The recommendation was also made to specifically require that hearings be held before VA personnel who would decide the issues raised, or in the alternative, that personnel who hold the hearing but do not make the decision be required to provide written assessment of the credibility of all witnesses as part of the hearing record.

In the majority of cases, hearings are held before VA personnel who ultimately decide the issues raised. However, in certain circumstances such is not the case. Specific circumstances include, but are not limited to, hearings held in conjunction with an employee's benefits claim at the office of employment followed by decision rendered by the office having jurisdiction of the claims file, cases involving prolonged absence of a Hearing Officer following a hearing, and requests to have hearings held at regional offices other than the office having jurisdiction of the claims file for convenience of the claimant and/or representative. Implementation of the suggested change would remove all flexibility from VA regarding the scheduling of personal hearings and management of pending workloads in this area, and in some cases would actually result in VA inability to provide hearings under circumstances requested by claimants and/or representatives.

Witness credibility is important but not dispositive of an issue; in any event, it typically can be ascertained from a reading of the hearing transcript in the context of the evidentiary record. VA should not be bound by a subjective opinion of an employee regarding witness credibility, but should rely on the content of the hearing transcript in conjunction with the other evidence of record in reaching a determination on the claim at issue. Moreover, the case law to date reveals there is no due process requirement that an assessment be made of a witness' credibility regardless of whether the decisionmaker is the person(s) who conducted the hearing.

VA feels the current rules, which allow flexibility in the scheduling process, allow for adequate procedures to guard against the erroneous deprivation of benefits and that the suggested changes would not provide improvements toward that end. Therefore, the recommended changes are not being adopted.

One commenter recommended that proposed § 3.103(c)(2) be amended to provide notice of the VA authority to issue a subpoena under 38 U.S.C. 3311 and insertion of a cross reference to the controlling regulation, 38 CFR 2.1.

Proceedings before VA are nonadversarial in nature. They are a combined effort to develop the true facts in each case, and VA has an obligation to assist claimants and beneficiaries in that regard. The extent of that assistance includes the authority to issue subpoenas under 38 CFR 2.1(a). The use of this authority is discretionary with VA.

In addition to the redundancy which would be created by repeating VA authority to issue subpoenas in this section, VA believes such repetitiveness would result in the misconception that subpoenas are issued routinely to obtain evidence when, in fact, such issuance by VA is rare. Before the authority is exercised, it must first be determined that such issuance is necessary and that the evidence being sought cannot be obtained in some other way. Alternative methods of obtaining the evidence almost always exist and these methods vary depending on the nature of the evidence being sought. For these reasons the recommended changes are not being adopted.

One commenter recommended that the proposed revision of 38 CFR 3.103(e) regarding the right to representation provide that failure of VA to furnish copies of notifications to properly designated representatives of claimants would extend any applicable time limits for actions by those claimants. This comment is being addressed in the section covering 38 CFR 3.109, where a similar suggestion was provided by the same commenter.

Section 3.105

Both commenters recommended that the proposed revision referring to a beneficiary's right to a predetermination hearing be amended to require a fixed period of time between the VA notice of the scheduled hearing date and the date of the hearing. One commenter recommended that a period of at least 10 days be specified in the regulation to allow time for hearing preparation.

The proposed rule uses the term "reasonable time" to allow flexibility in the scheduling process. At times, based on certain circumstances, expeditious hearings are requested or agreed to by beneficiaries and/or their representatives. In the absence of such a request or prior agreement, a hearing scheduled less than 10 days in the future would be an extremely rare occurrence. Such rarity is dictated by large pending hearing schedules. Occasionally, because of a cancellation, a time slot becomes available, and this slot is filled either with someone who has expressed a desire for an expeditious hearing or someone who has agreed to such a hearing when informed of the availability.

VA has always been agreeable to extensions of hearing dates upon request if good cause is shown, and VA is of the opinion that implementation of the proposed suggestion would provide little, if any, additional protection against erroneous deprivation of benefits. However, since no burden will be placed on the Government, we are

amending the final rule to implement the suggested change with a stipulation that the time period may be waived through agreement between VA and the beneficiary or representative.

One commenter recommended that the proposed regulation should be amended to provide for a delay of the final decision by VA where a predetermination hearing was requested by a beneficiary but was not held due to circumstances beyond control of the beneficiary. Health problems, including hospitalization, were indicated as an example of such circumstances.

VA has consistently applied procedures to recognize that delays in actions by beneficiaries may arise due to circumstances beyond their control. While we do not believe that inclusion of the suggested wording in the final regulation will provide any additional procedural safeguards against erroneous deprivation of benefits, we do acknowledge that there is no burden on the Government in making such a change. Since the recommended change will provide regulatory authority for long established adjudicative procedure, we have agreed to the recommendation and have included the phrase "without good cause" in the final rule together with examples of what would constitute such circumstances.

One commenter recommended that the proposed regulation be amended to require that evidence obtained pursuant to development by VA following a predetermination hearing be made available to the beneficiary and any properly designated representative in advance of the final decision. This would afford an opportunity for rebuttal of that evidence prior to VA reaching a decision on the issue.

VA does not agree that the recommended changes would provide any additional benefit for VA beneficiaries with regard to their right to fundamental fairness in reaching decisions on their claims. The recommended changes would require VA to routinely provide copies of requested evidence, and to provide opportunity for rebuttal in all cases including those which would be decided favorably to the beneficiary under the rules as proposed. Clearly, there is no risk of erroneous deprivation with favorable decisions, and the suggested changes provide no additional protection to successful beneficiaries while being extremely burdensome on the Government in terms of the impact on limited human resources and timeliness of decisions. Employee time would be required to copy and mail documents to beneficiaries and decisions would be delayed pending reply or expiration of a period allowed for reply.

Evidence obtained by VA following a hearing is usually obtained at the request of the beneficiary and/or representative of the beneficiary. Information from, or copies of, evidence considered by VA in reaching decisions may be made available to beneficiaries and/or duly authorized agents or representatives under the authority of 38 CFR 1.500 et seq. Evidence for purposes of rebuttal can be submitted within the one-year period following the decision on the claim either through the appeal process or through a reopening of the claim, thereby affording ample opportunity for submission of such evidence.

Regulatory requirements for providing detailed reasons for decisions and additional procedural safeguards are also being adopted with publication of this notice concerning proposed benefit reductions. VA finds these regulatory provisions to be adequate to guard against erroneous deprivation of benefits. Marginal gains in that regard, if any, afforded to beneficiaries by the commenter's suggestions would be far outweighed by the costs of implementation to the Government. For these reasons the recommended changes are not being adopted.

Section 3.109

One commenter noted that in the preamble to the proposed amendment VA admitted the wording of § 3.109(b) is "inappropriate with respect to due process," and the effective date of the amendment should be the date the "inappropriate" wording first appeared in the regulation.

The effective date of the amendments contained in this notice will be as shown in the beginning of this notice. VA believes the amendment to the rule to be a liberalizing measure that should have only prospective application in claims processing. Procedural regulations are amended from time to time to recognize developing concepts of due process. In so doing, VA does not concede that prior procedures necessarily resulted in deprivation of protected rights in individual claims. In view of the burden which would be involved in searching the many thousands of claim decisions made under the prior regulation, VA does not believe it would be a productive use of resources to attempt to determine whether any claimant may have been disadvantaged by failure to receive notice of a time limit.

One commenter recommended that the proposed revision allow for the extension of any time limit when VA fails to notify a claimant's properly designated representative. It was also recommended that the regulation specify that an allegation of nonreceipt of notification of a time limit will be substantiated by VA inability to produce a file copy of such notification showing it was sent to the claimant, at his or her last known address, and the claimant's properly designated representative.

We have reviewed the purpose of the regulation in light of this comment and believe that a modification consistent with that purpose is in order. By amending this regulation it is the intent of VA to ensure, to the maximum extent practicable, that notice of any time limit within which a claimant or beneficiary must act, to perfect a claim or challenge an adverse VA decision, is effectively communicated to that claimant or beneficiary. Ineffective notice is tantamount to no notice. Thus, there will be circumstances in which good cause for extension of time limits exists. For example, the failure to provide notice to a claimant or beneficiary would clearly be good cause for extending the time limits for action.

Since it is not possible to delineate all of the fact situations which could reasonably give rise to a finding of good cause for extension of time limits, VA has determined that each claim for time limit extension should be adjudicated on its own merits. Extension of time limits for good cause shown is a concept that has been adopted by other Federal agencies, notably the Department of Health and Human Services (20 CFR 404.909) and the Office of Personnel Management (5 CFR 1201.12 and 1201.22). The concept has also been refined by case law.

VA has traditionally been quite reasonable in extending time limits when requests for such extensions are received prior to expiration of the time limits involved. Once a time limit has expired, however, it is no longer reasonable to grant simple requests for extension of time. On the other hand, if a claimant or beneficiary takes the action which was required to have been taken within the previously established time limit and also shows good cause why the period of the time limit should be extended to cover the taking of that required action, consideration of the special circumstances should be afforded.

Accordingly, VA has revised 38 CFR 3.109(b) to provide that time limits for actions on the part of claimants or beneficiaries may be extended for good cause shown. Where an extension is requested after a time limit has expired,

the action required of the claimant or beneficiary must be taken concurrent with or prior to the filing of a request for extension of the time limit, and good cause must be shown as to why the required action could not have been taken during the original time period and could not have been taken sooner than it was. A favorable decision on the extension issue would automatically make the taking of the required action timely. Denials of such extensions would be separately appealable issues.

Section 3.110

One commenter recommended that the proposed revision be amended to specify that the beginning date of any time limit period be the date of the postmark on the envelope rather than the date on the letter of notification. The commenter states this would alleviate penalizing a claimant due to delays in mailing of the notification by VA.

All time limits established by VA regulations are computed from the date of the letter of notification. The date of the letter of notification is known by VA, whereas the date of the postmark is not. VA is of the opinion that its established time limits are generous. Even allowing for a delay of a few days for mail delivery, these limits provide ample time for claimants to perfect claims and appeals, and thus provide adequate protection against erroneous deprivation of benefits. For these reasons no changes are being made based on this comment.

Section 3.114

No comments were received regarding the proposed amendments to this section.

We appreciate the comments and suggestions of those who responded to publication of the proposed rules. The proposed rules are adopted with the amendments noted above and minor conforming amendments of a technical nature. The final rules are set forth below.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: March 20, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 3, Adjudication, is amended as set forth below:

PART 3—[AMENDED]

1. Section 3.103 is revised to read as follows:

§ 3.103 Procedural due process and appellate rights.

(a) *Statement of policy.* Every claimant has the right to written notice of the decision made on his or her claim, the right to a hearing, and the right of representation. Proceedings before VA are ex parte in nature, and it is the obligation of VA to assist a claimant in developing the facts pertinent to the claim and to render a decision which grants every benefit that can be supported in law while protecting the interests of the Government. The provisions of this section apply to all claims for benefits and relief, and decisions thereon, within the purview of this part 3.

(b) *The right to notice*—(1) *General.* Claimants are entitled to notice of any decision made by VA affecting the payment of benefits or the granting of relief. Such notice shall clearly set forth the decision made, any applicable effective date, the reason(s) for the decision, the right to a hearing on any issue involved in the claim, the right of representation and the right, as well as the necessary procedures and time limits, to initiate an appeal of the decision.

(2) *Pretermination/reduction notice.* Except as otherwise provided in paragraph (a)(3) of this section, no award of compensation, pension or dependency and indemnity compensation shall be terminated, reduced or otherwise adversely affected unless the beneficiary has been notified of such adverse action and has been provided a period of 60 days in which to submit evidence for the purpose of showing that the adverse action should not be taken.

(3) *Exceptions.* Pretermination/reduction notice is not required but notice contemporaneous with the adverse action is required when:

(i) An adverse action is based solely on written, factual, unambiguous information as to income, net worth, dependency or marital status provided by the beneficiary or his/her fiduciary with knowledge or notice that such information would be used to calculate benefits, and the legal standards applied to this information are numerical in nature,

(ii) An adverse action is based upon the beneficiary's or fiduciary's failure to return a required eligibility verification report, or

(iii) Evidence reasonably indicates that a beneficiary is deceased. However, in the event that VA has received a death certificate, a terminal hospital report verifying the death of a beneficiary or a claim for VA burial benefits, no notice of termination (contemporaneous or otherwise) will be required.

(c) *The right to a hearing.* (1) Upon request a claimant is entitled to a hearing at any time on any issue involved in a claim within the purview of part 3 of this chapter. VA will provide the place of hearing in the VA office having original jurisdiction over the claim or at the VA office nearest the claimant's home having adjudicative functions, and will provide VA personnel who have original determinative authority of such issues to conduct the hearing and be responsible for establishment and preservation of the hearing record. Hearings in connection with proposed adverse actions and appeals shall be held before VA personnel having original determinative authority who did not participate in the proposed action or the decision being appealed. All expenses incurred by the claimant in connection with the hearing are the responsibility of the claimant.

(2) The claimant is entitled to produce witnesses and all testimony will be under oath or affirmation. The purpose of a hearing is to permit the claimant to introduce into the record in person any available evidence which the claimant may consider material and any

arguments and contentions with respect to the facts and applicable law which the claimant may consider pertinent. It is the responsibility of the VA personnel conducting the hearings to explain fully the issues and suggest the submission of evidence which the claimant may have overlooked and which would be of advantage to the claimant's position. To assure clarity and completeness of the hearing record, questions which are directed to the claimant and to witnesses are to be framed to explore fully the basis for claimed entitlement rather than with an intent to refute evidence or to discredit testimony. In cases in which the nature, origin, or degree of disability is in issue, the claimant may request visual examination by a physician designated by VA and the physician's observations will be read into the record.

(d) *Submission of evidence.* Any evidence whether documentary, testimonial, or in other form, offered by the claimant in support of a claim and any issue a claimant may raise and any contention or argument a claimant may offer with respect thereto are to be included in the records.

(e) *The right to representation.* Subject to the provisions of §§ 14.626 through 14.637 of this title, claimants are entitled to representation of their choice at every stage in the prosecution of a claim.

(f) *Notification of decisions.* The claimant or beneficiary will be notified in writing of decisions affecting the payment of benefits or granting relief. Notice will include the reason for the decision and the date it will be effective as well as the right to a hearing subject to paragraph (c) of this section. The notification will also advise the claimant or beneficiary of the right to initiate an appeal by filing a Notice of Disagreement which will entitle the individual to a Statement of the Case for assistance in perfecting an appeal. Further, the notice will advise him or her of the periods in which an appeal must be initiated and perfected. (See part 19, subpart B, of this chapter, on appeals.)

2. Section 3.105 is amended by revising the last sentence in paragraph (d), paragraphs (e) and (f), and adding paragraphs (g) and (h), to read as follows:

§ 3.105 Revision of decision.

* * * * *

(d) * * * Unless otherwise provided in paragraph (h) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued, if in order, effective the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final rating action expires.

(Authority: 38 U.S.C. 3012(b)(6))

(e) *Reduction in evaluation—compensation.* Where the reduction in evaluation of a service-connected disability or employability status is considered warranted and the lower evaluation would result in a reduction or discontinuance of compensation payments currently being made, a rating proposing the reduction or discontinuance will be prepared setting forth all material facts and reasons. The beneficiary will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence to show that compensation payments should be continued at their present level. Unless otherwise provided in paragraph (h) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued effective the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final rating action expires.

(Authority: 38 U.S.C. 3012(b)(6))

(f) *Reduction in evaluation—pension.* Where a change in disability or employability warrants a reduction or discontinuance of pension payments currently being made, a rating proposing the reduction or discontinuance will be prepared setting forth all material facts and reasons. The beneficiary will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence to show that pension benefits should be continued at their present level. Unless otherwise provided in paragraph (h) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued effective the last day of the month in which the final rating action is approved.

(Authority: 38 U.S.C. 3012(b)(5))

(g) *Other reductions/discontinuances.* Except as otherwise specified at § 3.103(b)(3) of this part, where a reduction or discontinuance of benefits is warranted by reason of information received concerning income, net worth, dependency, or marital or other status, a proposal for the reduction or discontinuance will be prepared setting forth all material facts and reasons. The beneficiary will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence to show that the benefits should be continued at their present level. Unless otherwise provided in paragraph (h) of this section, if additional evidence is not received within that period, final adverse action will be taken and the award will be reduced or discontinued effective as specified under the provisions of §§ 3.500 through 3.503 of this part.

(Authority: 38 U.S.C. 3012)

(h) *Predetermination hearings.* (1) In the advance written notice concerning proposed actions under paragraphs (d) through (g) of this section, the beneficiary will be informed that he or she will have an opportunity for a predetermination hearing, provided that a request for such a hearing is received by VA within 30 days from the date of the notice. If a timely request is received, VA will notify the beneficiary in writing of the time and place of the hearing at least 10 days in advance of the scheduled hearing date. The 10 day advance notice may be waived by agreement between VA and the beneficiary or representative. The hearing will be conducted by VA personnel who did not participate in the proposed adverse action and who will bear the decision-making responsibility. If a predetermination hearing is timely requested, benefit payments shall be continued at the previously established level pending a final determination concerning the proposed action.

(2) Following the predetermination procedures specified in this paragraph and paragraph (d), (e), (f) or (g) of this section, whichever is applicable, final action will be taken. If a predetermination hearing was not requested or if the beneficiary failed without good cause to report for a scheduled predetermination hearing, the final action will be based solely upon the evidence of record. Examples of good cause include, but are not limited to, the illness or hospitalization of the claimant or beneficiary, death of an immediate family member, etc. If a predetermination hearing was conducted, the final action will be based on evidence and testimony adduced at the hearing as well as the other evidence of record including any additional evidence obtained following the hearing pursuant to necessary development. Whether or not a predetermination hearing was conducted, a written notice of the final

action shall be issued to the beneficiary, setting forth the reasons therefor and the evidence upon which it is based. Where a reduction or discontinuance of benefits is found warranted following consideration of any additional evidence submitted, the effective date of such reduction or discontinuance shall be as follows:

(i) Where reduction or discontinuance was proposed under the provisions of paragraph (d) or (e) of this section, the effective date of final action shall be the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final action expires.

(ii) Where reduction or discontinuance was proposed under the provisions of paragraph (f) of this section, the effective date of final action shall be the last day of the month in which such action is approved.

(iii) Where reduction or discontinuance was proposed under the provisions of paragraph (g) of this section, the effective date of final action shall be as specified under the provisions of §§ 3.500 through 3.503 of this part.

(Authority: 38 U.S.C. 3012)

3. In § 3.109, paragraph (b) is revised and an authority citation is added, to read as follows:

§ 3.109 Time limit.

* * * * *

(b) *Extension of time limit.* Time limits within which claimants or beneficiaries are required to act to perfect a claim or challenge an adverse VA decision may be extended for good cause shown. Where an extension is requested after expiration of a time limit, the action required of the claimant or beneficiary must be taken concurrent with or prior to the filing of a request for extension of the time limit, and good cause must be shown as to why the required action could not have been taken during the original time period and could not have been taken sooner than it was. Denials of time limit extensions are separately appealable issues.

(Authority: 38 U.S.C. 210(c))

4. Section 3.110 is revised and an authority citation is added, to read as follows:

§ 3.110 Computation of time limit.

(a) In computing the time limit for any action required of a claimant or beneficiary, including the filing of claims or evidence requested by VA, the first day of the specified period will be excluded and the last day included. This rule is applicable in cases in which the time limit expires on a workday. Where the time limit would expire on a Saturday, Sunday, or holiday, the next succeeding workday will be included in the computation.

(b) "The first day of the specified period" referred to in paragraph (a) of this section shall be the date of mailing of notification to the claimant or beneficiary of the action required and the time limit therefor. The date of the letter of notification shall be considered the date of mailing for purposes of computing time limits. As to appeals, see § 19.129 of this chapter.

(Authority: 38 U.S.C. 210(c))

5. Section 3.114(a) is revised to read as follows:

§ 3.114 Change of law or VA issue.

(a) *Effective date of award.* Where pension, compensation, or dependency and indemnity compensation is awarded or increased pursuant to a liberalizing law, or a liberalizing VA issue approved by the Secretary or by the Secretary's direction, the effective date of such award or increase shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue. In order to be eligible for a retroactive payment under the provisions of this paragraph the evidence must show that the claimant met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or VA issue and that such eligibility existed continuously from that date to the date of claim or administrative determination of entitlement. The provisions of this paragraph are applicable to original and reopened claims as well as claims for increase.

(1) If a claim is reviewed on the initiative of VA within 1 year from the effective date of the law or VA issue, or at the request of a claimant received within 1 year from that date, benefits may be authorized from the effective date of the law or VA issue.

(2) If a claim is reviewed on the initiative of VA more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of administrative determination of entitlement.

(3) If a claim is reviewed at the request of the claimant more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of receipt of such request.

(Authority: 38 U.S.C. 3010(g))

* * * * *

[FR Doc. 90-8279 Filed 4-10-90; 8:45 am]
BILLING CODE 8320-01-M

38 CFR Parts 3, 21

RIN 2900-AE05

Veterans Education; Disabling Effects of Chronic Alcoholism

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Veterans Benefits and Programs Improvement Act of 1988 provides among other things that for the purposes of any provision relating to the extension of a delimiting period under any education benefit or rehabilitation program administered by the Department of Veterans Affairs, the disabling effects of chronic alcoholism shall not be considered to be the result of willful misconduct. These final regulations will inform the public of the way in which the Department of Veterans Affairs (VA) will implement this provision of law with respect to the Post-Korean Conflict GI Bill. The change to 38 CFR 3.301(b) is made to conform to a provision of the Veterans' and Survivors' Pension Improvement Act of 1978.

EFFECTIVE DATE: The effective date of the amendment to § 3.301(b), is April 11, 1990. The effective date of all other amended regulations, like the provision of law they implement, is November 18, 1988.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 31950 through 31952 of the **Federal Register** of August 3, 1989, there was published interim regulations with a request for public comment which are part of part 3, 38 CFR and part 21, 38 CFR. Section 3.301(b) is corrected to conform to a provision of Public Law 95-588 which amended 38 U.S.C. 521 to delete a reference to "vicious habits." The remainder of these regulations implemented section 109 of the Veterans Benefits and Programs Improvement Act of 1988 (Pub. L. 100-689). That section states that for the purposes of extending the eligibility period for educational assistance under any of the educational laws or vocational rehabilitation laws administered by the Department of Veterans Affairs, the disabling effects of chronic alcoholism will not be

considered to have been the result of willful misconduct.

Interested people were given 33 days to submit comments, objections or suggestions. VA received a letter from a service organization containing suggestions.

The letter writer stated that although the published regulations enumerate several mental disorders as examples of the disabling effects of chronic alcoholism, additional language should be added to clarify the definition in terms of the criteria for alcohol related disabilities set forth in DSM–III–R (Diagnostic and Statistical Manual of Mental Disorders (Third Edition—Revised) published by the American Psychiatric Association, Washington, DC, 1987). After careful consideration VA has decided not to accept this suggestion.

DSM–III–R contains descriptions of alcohol-induced organic mental disorders. However, not all of those described could be considered as always being one of the disabling effects of chronic alcoholism. For example, alcohol intoxication is described. But alcohol intoxication can result from a single episode of excessive ingestion of alcohol. It does not indicate that the intoxicated person is suffering from chronic alcoholism VA believes that those mental disabilities which are described in the regulation are disabling effects of chronic alcoholism. VA does not wish to expand the definition to include other disorders which may not be the result of chronic alcoholism.

The letter writer also suggested that 38 CFR 21.1043 be expanded to allow for an extension of a veteran's delimiting date for psychological problems which may be related to chronic alcoholism. VA is unable to accept this suggestion, because it does not have the legal authority to do so. The law (38 U.S.C. 1662(a)(1)) states that eligibility periods may be extended when an eligible veteran was unable to use his or her educational assistance allowance because of a physical or mental disability. Psychological problems may not be of such severity as to be considered mental disabilities. Accordingly, to regard all psychological problems as qualifying a veteran for an extension of his or her eligibility period would go beyond what is permitted by law.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Secretary of Veterans Affairs has determined that good cause exists for making the effective date of those regulations which implement Public Law 100–689, retroactively effective on November 18, 1988. To achieve the maximum benefit of the legislation for the affected individuals, it is necessary to implement this provision of the law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to it.

The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 21, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 3, Adjudication, is amended as follows:

PART 3—ADJUDICATION

1. In § 3.301, paragraph (b), the introductory text of paragraph (c), paragraph (c)(2), and the cross reference at the end of the section are revised to read as follows:

§ 3.301 Line of duty and misconduct.

* * * * *

(b) *Willful misconduct.* Disability pension is not payable for any condition due to the veteran's own willful misconduct.

(Authority: 38 U.S.C. 521)

(c) *Specific applications.* For the purpose of determining entitlement to service-connected and nonservice-connected benefits the definitions in §§ 3.1 (m) and (n) of this part apply except as modified within paragraphs (c)(1) through (c)(3) of this section. The provisions of paragraphs (c)(2) and (c)(3) of this section are subject to the provisions of § 3.302 of this part where applicable.

(Authority: 38 U.S.C. 210(c))

* * * * *

(2) The simple drinking of alcoholic beverage is not of itself willful misconduct. The deliberate drinking of a known poisonous substance or under conditions which would raise a presumption to that effect will be considered willful misconduct. If, in the drinking of a beverage to enjoy its intoxicating effects, intoxication results proximately and immediately in disability or death, the disability or death will be considered the result of the person's willful misconduct. Organic diseases and disabilities which are a secondary result of the chronic use of alcohol as a beverage, whether out of compulsion or otherwise, will not be considered of willful misconduct origin. (See §§ 21.1043, 21.5041, and 21.7051 of this title regarding the disabling effects of chronic alcoholism for the purpose of extending delimiting periods under education or rehabilitation programs.)

(Authority: 38 U.S.C. 210(c))

* * * * *

Cross-References: In line of duty. See § 3.1(m). Willful misconduct. See § 3.1(n). Extended period of eligibility. See §§ 21.1043 and 21.7051. Periods of entitlement. See § 21.5041.

§ 3.302 [Amended]

2. Section 3.302 is amended as follows:

a. In § 3.302(a)(2), remove the words "of willful misconduct" and add, in their place, the words "or willful misconduct".

b. In § 3.302(b)(1), remove the word "he" and add, in its place, the words "he or she".

(c) In § 3.302(b)(1), remove the word "his" and add, in its place, the words "his or her".

(d) In § 3.302(b)(3), remove the word "man" and add, in its place, the word "person".

38 CFR part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 21—VOCATIONAL REHABILITATION

3. In § 21.1043, paragraphs (b), (c), and (d) are redesignated as paragraphs (c), (d), and (e) respectively; paragraph (a)(2) is revised, new paragraph (b) is added; paragraphs (c)(2) and (c)(3) are redesignated as paragraphs (c)(3) and (c)(4) and new paragraph (c)(2) is added, so the revised and added text reads as follows:

§ 21.1043 Extended period of eligibility.

(a) * * *

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or mental disability that did not result from the willful misconduct of the veteran. It must be clearly established by medical evidence that such a program of education was medically infeasible. A veteran who is disabled for a period of 30 days or less will not be considered as having been prevented from initiating or completing a chosen program, unless the evidence establishes that the veteran was prevented from enrolling or reenrolling in the chosen program of education, or was forced to discontinue attendance, because of the short disability.

(i) For the purposes of the extension of the period of eligibility described in this section, the Department of Veterans Affairs will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct and will consider those disabling effects as physical or mental disabilities.

(ii) The provisions of paragraph (a)(2)(i) of the section will apply only when the last date of the time limit for filing a claim for the extension determined under § 21.1032(d) of this part occurs after November 17, 1988.

(Authority: 38 U.S.C. 1662; Pub. L. 100-689)

(b) *Disabling effects of chronic alcoholism.* (1) The term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case—

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse, and

(ii) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(2) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(3) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 1662; Pub. L. 100-689)

(c) * * *

(2) Must be after November 17, 1988, if the veteran qualifies for the extended period of eligibility solely based on the disabling effects of chronic alcoholism, and

* * * * *

[FR Doc. 90-8281 Filed 4-10-90; 8:45 am]
BILLING CODE 8320-01-M

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38 CFR Part 17

RIN 2900-AE06

Confidentiality of Tort Claim Peer Review

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations which govern the VA medical quality assurance program. These regulations delineate the responsibilities within VA's Veterans Health Services and Research Administration (VHS&RA) with respect to the conduct of the Quality Assurance (QA) program and establishes standards that ensure that certain quality assurance records and documents are adequately safeguarded and used appropriately.

EFFECTIVE DATE: May 11, 1990.

FOR FURTHER INFORMATION CONTACT: Agatha Francis, Office of the Medical Inspector (10/MI), Veterans Health Services and Research Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-5417.

SUPPLEMENTARY INFORMATION:

A. History

The Veterans Disability Compensation and Housing Benefits Amendments of 1980 (Pub. L. 96-385) amended section 3305 of title 38 United States Code, to require the Secretary of Veterans Affairs, to specify by regulation, activities which meet the definition of VA's medical quality assurance program. This act explicitly precludes any activity from being designated as a quality assurance program unless such designation has been specified in regulation.

Final regulations to implement section 3305 of title 38, United States Code, were published October 22, 1982 (47 FR 47010), and as codified at 38 CFR 17.500-17.540. On July 7, 1989, VA published on pages 28667 through 28673 of the **Federal Register** amendments to VA regulations implementing section 3305 of title 38. These amendments were required to comply with changes to title 38, United States Code, enacted by the Veterans Benefits and Services Act of 1988 (Pub. L. 100-322), and the Veterans Health Care Amendments of 1985 (Pub. L. 99-166), as well as to include the MEDIPRO program. Development and refinement of VA's QA program since the publication of those Health Services Review Organization (HSRO) regulations has identified the need for changes. On September 26, 1989, proposed regulations to 38 CFR part 17 were published in the **Federal Register** on pages 39418 through 39421 (54 FR 39418). Interested persons were given 30 days to submit comments, suggestions, or objections. The Department of Veterans Affairs received comments from one writer. The writer suggested that for clarity and to be consistent with the description of other Health Services Review Organization (HSRO) entitles, the Tort Claim Information System (TCIS) should be expressed as HSRO-TCIS in § 17.500(b)(4) and elsewhere in the regulations. This change has been made.

The writer suggested that the paragraph indicating types of records and documents generated during a quality assurance investigation be moved from § 17.508(d) to a newly designated § 17.517(d) which specifically covers HSRO-SIR records and documents. This change has been made.

The writer indicated that the heading for § 17.527 remain titled "Access to HSRO data within the Department" and that the paragraph § 17.527(j) be deleted since this content is covered in § 17.527(g). These changes have been made.

The writer suggested adding a paragraph providing for HSRO-TCIS documents and records to be available to VA Regional Directors. This is not necessary since HSRO-TCIS data are designated to be submitted to the Office of the Medical Inspector from the VA health care facility via the Region with jurisdiction.

B. Scope

These amendments to the medical quality assurance program add review activities related to tort claims for

alleged medical malpractice, indicate that upon request a Department employee who is a bargaining unit member may have union member representation while being questioned in the course of a medical quality assurance investigation pursuant to 38 U.S.C. 3305, and clearly define the documents that are considered a part of a quality assurance investigation and thus are protected under these regulations.

These final regulatory amendments do not meet the criteria for a major rule as that term is defined by Executive Order 12291. These regulatory amendments will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices and will not have any other significant adverse effects on the economy.

The Secretary hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 United States Code 601–612. Pursuant to 5 United States Code 605(b), these regulations are therefore exempt from the regulatory analysis requirements of 5 United States Code 603 and 604. The reason for this certification is that the regulations govern only the internal handling of a small category of confidential VA records. The regulations concern the Department's implementation of its medical quality assurance program and impose no regulatory burden on small entities.

There is no Federal Domestic Assistance program number for these regulations.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved: March 21, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 17, Medical, is amended as follows:

PART 17—MEDICAL

1. In § 17.500, paragraphs (b) and (c) are revised and paragraph (e) is added to read as follows:

§ 17.500 General.

* * * * *

(b) HSRO is a multifaceted program. (1) Health Services Review Organization-Systematic Internal Review (HSRO-SIR) is an integrated quality assurance process that is internal to each VA Medical Facility.

(2) Health Services Review Organization-Medical District Initiated Peer Review Organization (HSRO-MEDIPRO) is a clinically oriented, medical district based, peer review system of quality of care and resource utilization assessment to the medical facility.

(3) Health Services Review Organization-Systematic External Review Program (HSRO-SERP) is a system-wide VA review mechanism external to each VA medical facility in which health care evaluators review clinical and administrative aspects of the quality of care in VA medical facilities and the effectiveness of their HSRO-SIR programs.

(4) Health Services Review Organization-Tort Claim Information System (HSRO-TCIS) is a computerized system that contains the peer review of the medical care provided that led to the filing of a tort claim. This system may be maintained at any and all levels of the Veterans Health Services and Research Administration and in the Office of General Counsel and any office under the jurisdiction of the General Counsel.

(c) Corrective action on all medical facility problems or recommendations identified by an HSRO–SIR, HSRO–MEDIPRO, HSRO–SERP or HSRO–TCIS review will be initiated and implemented at the lowest possible organizational level through the lines of existing authority.

* * * * *

(e) HSRO–SIR, HSRO–MEDIPRO, HSRO–SERP and HSRO–TCIS program activities will be established, conducted and maintained at VHS&RA organizational levels as prescribed by these HSRO confidentiality regulations and VA policy.

(Authority: 38 U.S.C. 3305)

2. In § 17.504, paragraph (a) is revised to read as follows:

§ 17.504 Conduct and evaluations.

(a) Any employee participating in HSRO–SIR, HSRO–SERP, HSRO–MEDIPRO or HSRO–TCIS program activities will exercise prudent and diligent care and act in good faith while gathering and analyzing factual information prior to making any judgment which may reflect adversely on a VA employee or VA medical facility.

* * * * *

3. In § 17.508, paragraphs (c) (1) and (2) are revised to read as follows:

§17.508 Patient injury control.

* * * * *

(c) *Quality Assurance investigation.* (1) A investigation for quality assurance purposes in the Patient Injury Control Program, or any other Quality Assurance Program described in these HSRO regulations, is an inquiry into any incident involving a patient, examples of which are described in paragraph (a) of this section. The focus of a quality assurance investigation is to identify problems in the delivery of health care, to analyze and review such problems and to propose corrective action. An administration employee who is being questioned in the course of a quality assurance investigation and who is a bargaining unit member who requests union representation is entitled to it. This right arises as the result of labor law considerations. The union representative must sign a statement as defined in § 17.527(e) of this part. Except under these circumstances described, an employee is not permitted to have representation during a quality assurance investigation.

(2) If it is determined by the Medical Facility Director, the Chief Medical Director, the Medical Inspector, or other authorized designee, that such an incident necessitates an investigation for quality assurance purposes, only those records and documents specified in § 17.517(d) of this part will be considered privileged and confidential for the purposes of 38 U.S.C. 3305 and these HSRO regulations, provided that the following steps are taken:

The decision to conduct a quality assurance investigation must be documented in writing and signed by the authorizing official. In the first paragraph of the document, the following statement will be included to indicate that a quality assurance investigation is being initiated:

In accordance with the provisions of 38 CFR 17.508(c)(2), I hereby direct that a quality assurance investigation be conducted regarding (describing incident). All documents, memoranda, reports and other records generated by and included in or concerning this investigation as specified in §17.518(d) of this part will be strictly confidential and will be disclosable only as permitted by 38 U.S.C 3305.

* * * * *

4. In § 17.517, paragraph (d) is revised to read as follows:

§ 17.517 HSRO–SIR records and documents.

* * * * *

(d) Patient Injury Control records and documents include incident reporting form(s) (VA Form 10–2633, Report of Special Incident Involving a Beneficiary), screening records, patient

incident analysis and quality assurance investigations. However, only those records and documents that are generated during or concerning a quality assurance investigation in accordance with § 17.508(c)(2) are confidential and privileged as provided by 38 U.S.C 3305. These include:

(1) Minutes, testimony transcripts, reports or other documents contained in the investigation.

(2) Memoranda or other documents generated within the facility as part of the review of the investigation.

(3) Letters from the Medical Inspector or Regional Director, or authorized designee to the medical facility dealing with the investigation and its review.

(4) Letters from the medical facility to the Regional Director, Medical Inspector or authorized designee responding to their letters of inquiry, or comment concerning the quality assurance investigation.

(5) Memoranda, reports or other documents generated within the Office of the Medical Inspector or the Regional Director's office or their designees dealing with the investigation or a review of the investigation.

(Authority: 38 U.S.C. 3305)

* * * * *

5. In § 17.527, paragraphs (a) and (e) and the authority citation for the section are revised to read as follows:

§ 17.527 Access to HSRO data within the Department.

(a) Access to protected quality assurance data, which now includes HSRO–TCIS data, within the Department pursuant to this section is restricted to VA employees (including consultants and contracts of VA) subject to the requirements of § 17.504 of this part.

* * * * *

(e) Any VA employee or other individual not on this List of Authorization, who is granted disclosure of or access to protected quality assurance records or documents must sign a statement verifying awareness of the regulations and penalties relevant to improper disclosure of confidential and privileged HSRO records and documents and agreeing to hold the records or documents confidential. These signed statements will be maintained in a file with a copy of individual requests for protected quality assurance records and documents and a notation of those records or documents which have been released or disclosed. The union representative of an employee in a quality assurance investigation as defined in § 17.503(c) of this part must sign such a statement each time that individual serves as a representative in a quality assurance investigation. If the individual is representing more than one person during the course of a single quality assurance investigation this statement must indicate the names of all the employees being represented.

* * * * *

(Authority: 38 U.S.C. 3305)

6. In § 17.534, paragraph (d) is revised to read as follows:

§ 17.534 Authorized disclosure: Non-Department of Veterans Affairs requests.

* * * * *

(d) Protected quality assurance records or documents, including records pertaining to a specific individual, shall be disclosed to a civil or criminal law enforcement governmental agency or instrumentality charged under applicable law with the protection of public health or safety if a written request for such records or documents is received from an official of such an organization. The request must state the purpose authorized by law for which the records will be used. This includes disclosure for State licensing and disciplinary agencies.

* * * * *

7. Section 17.541 is added to read as follows:

§ 17.541 Tort Claim Information System.

(a) Tort claims against the Department arising from medical care provided by the Department of Veterans Affairs usually involve allegations that the medical care was inadequate in some manner. This portion of the Quality Assurance Program will review the medical care that is the subject of the tort claim and any protected quality assurance information that may relate to this case to identify, evaluate and, where appropriate, correct circumstances that have the potential of adversely affecting other patients. When the claim is received, the District Counsel will notify the medical center(s) involved in providing the medical care identified in the allegations that a claim has been filed and the particulars of the claim. The medical care provided will then be reviewed by the medical center(s), the Office of the Regional Director and the Office of the Medical Inspector. Specialists external to the Department of Veterans Affairs, as well as any other appropriate review group, may be asked in writing by one of the Health Services Review Organization entities listed in § 17.500(b) to review the case.

(b) The peer review will be undertaken in the following manner:

(1) Each medical center will, upon notification that an alleged malpractice claim has been filed involving that facility, conduct a peer review of the case in question.

(2) The medical center's completed peer review analysis of the case, as well as the clinical information concerning the case and any pertinent protected quality assurance information, will be forwarded through the Regional Director to the Office of the Medical Inspector, Department of Veterans Affairs Central Office. The Regional Director will analyze information submitted by the medical centers within the region and will make determinations on such matters as problems/errors in case management.

(3) The Medical Inspector will create a Tort Claim Information System (TCIS) for the Department of Veterans Affairs. The Medical Inspector will analyze the information submitted by the medical centers and make determinations as to the quality of care provided, including problems/errors in case management.

(4) The results of the analyses and investigations conducted pursuant to this paragraph will be placed in TCIS.

(c) The reviews under paragraph (b) of this section may take the form of an investigation, a peer review by a single health care provider, a mortality/morbidity review or a peer review by multiple health care providers. These reviews may be conducted at any organizational level within VHS&RA. These reviews may be done in part or in full by experts from outside the Department of Veterans Affairs. Experts from outside the Department of Veterans Affairs may participate in the Department of Veterans Affairs review of these cases. Such experts must be advised of the restrictions and penalties for redisclosure of protected quality assurance records and documents, and agree, in writing, to comply with them. In conducting the TCIS peer review analyses and investigations, the reviewers are entitled to access to any quality assurance data and records protected by 38 U.S.C. 3305 and these regulations to the extent necessary to perform assigned TCIS functions.

(d) Only those records and documents generated during peer review in accordance with this section are considered confidential and privileged under TCIS. TCIS records and documents made confidential and privileged by 38 U.S.C. 3305 and these regulations include the following:

(1) Minutes, testimony transcripts, reports or other documents contained in the review of the medical facility.

(2) Memoranda or other documents generated within the facility as part of the review of the claim.

(3) Letters and documents from the medical facility to the MEDIPRO board, the Regional Director, Medical Inspector

or authorized designee concerning the review and analysis of the medical care provided.

(4) Minutes, memoranda or other documents generated by the Regional Director's staff, the MEDIPRO board or the Medical Inspector as part of the review of the claim, including analysis of the information submitted.

(5) The conclusions and the findings of the review performed by the medical facility, the MEDIPRO board, the Regional Director's staff or the Medical Inspector, including that portion of TCIS which identifies the results of the analysis of the case and the problems/errors identified by peer review.

(e) All copies of TCIS records and documents will be maintained in a secure file in accordance with the provisions of § 17.508(c)(4) (i) and (iii) and § 17.527(g).

(f) The TCIS, including that portion that is made privileged and confidential by 38 U.S.C. 3305, may be maintained by any element within the Department of Veterans Affairs, Veterans Health Services and Research Administraiton, including field stations, and the Office of General Counsel and any office subject to the jurisdiction of the General Counsel.

(Authority: 38 U.S.C. 3305)

[FR Doc. 90-8280 Filed 4-10-90; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6868]

List of Communities Eligible for the Sale of Flood Insurance; Missouri and Ohio

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures complaint with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: As shown in fifth column.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of the Federal Emergency Management Agency has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of Eligible Communities.

State	Community name	County	Community No.	Effective date
Regular Program Communities				
Missouri	Jackson County	Unincorporated areas.	290492	February 16, 1990. Suspension withdrawn.
Do	Portgage Des Sioux, city of	St. Charles	290317	Do.
Do	Strasburg, city of	Cass	290071	Do.
Do	Sturgeon, city of	Boone	290039	Do.
Do	Williamsville, city of	Wayne	290452	Do.
Do	Advance, city of	Stoddard	290420	March 5, 1990. Suspension withdrawn.
Do	Eminence, city of	Shannon	290418	Do.
Do	Homestown, city of	Pemiscot	290278	Do.
Do	Jackson, city of	Cape Girardeau	295265	Do.

State	Community name	County	Community No.	Effective date
Do	Pleasant Hill, city of	Cass	295269	Do.
Ohio	Carrollton, village of	Carroll	390048	March 19, 1990.
Do	Grand River, village of	Lake	390315	Do.
Do	Grover Hill, village of	Pauling	390436	Do.
Do	North Olmsted, city of	Cuyahoga	390120	Do.
Do	Peninsula, village of	Summit	390530	Do.

Issued: April 2, 1990.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 90-8382 Filed 4-10-90; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 87

[DA 90-508]

Editorial Amendments to the Aviation Services Rules; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects the order concerning Aviation Services which was released February 21, 1990, 55 FR 7332 (Mar. 1, 1990). In that order, in the first column of page 7333, the last sentence is removed from the quoted Footnote 5 of § 87.137(a).

EFFECTIVE DATE: April 11, 1990.

FOR FURTHER INFORMATION CONTACT: Eric Malinen, Private Radio Bureau (202) 632-7175.

SUPPLEMENTARY INFORMATION: In FR Doc. 90-4650, published in the March 1, 1990, **Federal Register** on page 7332, the footnote 5 in amendatory item 2 is correctly revised to read as follows:

§ 87.137 Types of emission.

* * * * *

Notes:

* * * * *

[5] This emission may be authorized for audio frequency shift keying and phase shift keying for digital data links on any frequency listed in § 87.263(a)(1) or § 87.263(a)(3). 13KOA2D emission may be authorized on frequencies not used for voice communications. If the channel is used for voice communications, 13KOA9W emission may be authorized, provided the data is multiplexed on the voice carrier without derogating voice communications.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-8288 Filed 4-10-90; 8:45 am]

BILLING CODE 6712-01-M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1552

FRL 3753-6

Financial and Organizational Information and Purchasing System Information by Offerors; Correction

AGENCY: Environmental Protection Agency.

ACTION: Provisional rule; correction.

SUMMARY: EPA is correcting § 1552.215-76 by adding the OMB Control Number which was approved by the Office of Management and Budget, but was inadvertently omitted from the regulatory text of the document published in the **Federal Register** of Wednesday, September 6, 1989, at 54 FR 36980.

FOR FURTHER INFORMATION CONTACT: Edward N. Chambers at (202) 382-5028.

In FR Doc. 89-20761, beginning on page 36979, in the issue of Wednesday, September 6, 1989, make the following correction:

PART 1552—[CORRECTED]

1552.215-76 [Corrected]

On page 36980, 1552.215-76, in the second column, at the end of paragraph (q) add the following parenthetical phrase to read as follows:

(Approved by Office of Management and Budget under control number 2030-0006)

Dated: March 12, 1990.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 90-8395, filed 4-10-90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Parts 302, 314, 315, 317, and 319

Acquisition Regulation; Miscellaneous Amendments

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is amending its acquisition regulation (HHSAR), title 48, Code of Federal Regulations, chapter 3, to make several administrative changes.

EFFECTIVE DATE: April 11, 1990.

FOR FURTHER INFORMATION CONTACT: Ed Lanham, Procurement Analyst, Division of Acquisition Policy, telephone (202) 245-8890.

SUPPLEMENTARY INFORMATION: The Department is amending its acquisition regulation to make several administrative changes in parts 314, 315, and 319, as a result of recent amendments made in corresponding parts of the Federal Acquisition Regulation (FAR), title 48, Code of Federal Regulations, chapter 1. The amendments being made in parts 314 and 315 involve minor implementation of the FAR concerning the use of facsimile bids and proposals, and the use of the annual submission of representations and certifications.

The amendments to part 319 concern the Small Business Administration's "section 8(a) Program," and represent a reduction in the Department's current coverage on the subject because of the expanded scope of the new FAR subpart.

The amendments to parts 302 and 317 reflect the updating of office designations.

The Department of Health and Human Services adheres to the policy that the public, or certain elements comprising it, should have the opportunity to provide comments on regulations which may have an impact on them. The Department has determined, however, that this rule contains no amendments

that would have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the Department. As a result, the Department is not requesting comments on these acquisition regulations, and is publishing them as a final rule.

The Department of Health and Human Services certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.); therefore, no regulatory flexibility statement has been prepared. Furthermore, this document does not contain information collection requirements needing approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.)

The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of subjects in 48 CFR Parts 302, 314, 315, 317, and 319

Government procurement.

Accordingly, the Department of Health and Human Services amends 48 CFR chapter 3 as set forth below.

Dated April 2, 1990.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

As indicated in the preamble, chapter 3 of title 48 Code of Federal Regulations is amended as shown.

1. The authority citation for parts 302, 314, 315, 317, and 319 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

PART 302—[AMENDED]

302.100 [Amended]

2. The term "Principal official responsible for acquisition" in § 302.100 is amended by replacing the title following the designation "IHS" with "Director, Division of Contracts and Grants Policy, Office of Administration and Management."

PART 314—[AMENDED]

3. Part 314 is amended to add a new subpart 314.2 to read as follows:

Subpart 314.2—Solicitation of Bids

Sec.
314.202-7 Facsimile bids.
314.213 Annual submission of representations and certifications.

Subpart 314.2—Solicitation of Bids

314.202-7 Facsimile bids.

The principal official responsible for acquisition (PORA) shall determine whether to allow the use of facsimile bids. If the PORA decides to allow the use of facsimile bids, internal procedures shall be developed, in accordance with the FAR, to ensure uniform processing and control.

314.213 Annual submission of representations and certifications.

Each principal official responsible for acquisition (PORA) shall determine whether to allow the use of the annual submission of representations and certifications by bidders. If allowed, the provisions of FAR 14.213 shall be followed.

PART 315—[AMENDED]

Subpart 315.4—[Amended]

4. Subpart 315.4 is amended to add the following new sections:

315.402 General.

(i) The principal official responsible for acquisition (PORA) shall determine whether to allow the use of facsimile proposals. If the PORA decides to allow the use of facsimile proposals, internal procedures shall be developed, in accordance with the FAR, to ensure uniform processing and control.

315.471 Annual submission of representations and certifications.

Each principal official responsible for acquisition (PORA) shall determine whether to allow the use of the annual submission of representations and certifications by offerors. If allowed, the provisions of FAR 14.213 shall be followed.

PART 317—[AMENDED]

317.7002 [Amended]

5. Paragraph (b)(3) of § 317.7002 is amended by replacing the office designation "Division of Contracts and Grants," with "Division of Procurement,".

PART 319—[AMENDED]

Subpart 319.8—[Amended]

6. Subpart 319.8 is revised to read as follows:

Subpart 319.8—Contracting with the Small Business Administration (the 8(a) Program)

Sec.
319.800 General.
319.803 Selecting acquisitions for the 8(a) Program.
319.812 Contract administration.
319.870 Liaison with the Small Business Administration.

Subpart 319.8—Contracting with the Small Business Administration (the 8(a) Program)

319.800 General.

(c) The signing of the contract document may be accepted as the Small Business Administration's (SBA) certification that SBA is competent to perform a specific HHS requirement.

319.803 Selecting acquisitions for the 8(a) Program.

(c) Brochures of 8(a) concerns which have been interviewed by the Office of Small and Disadvantaged Business Utilization (OSDBU) are forwarded to each small and disadvantaged business utilization specialist (SADBUS). These brochures are to be reviewed by the SADBUS to match HHS requirements with the capabilities of these concerns. The SADBUS will make the capabilities of these concerns known to program personnel and will obtain information, as needed, by contacting OSDBU or SBA.

319.812 Contract administration.

(b) The responsibility for subcontract administration and field inspection will, in most cases, be delegated by SBA to the contracting activity. The contracting activity may develop a tripartite agreement for execution by SBA, the 8(a) subcontractor, and the contracting activity instead of developing separate modifications for the SBA contract and the 8(a) subcontract.

(c) Some 8(a) concerns may need additional management expertise for optimal performance and completion of a particular contract. Therefore, when subcontract administration is delegated to HHS by SBA, the contracting activity shall promptly apprise the SBA, the SADBUS, and OSDBU whenever the contractor is experiencing problems. SBA should provide necessary technical assistance so the contractor can successfully complete the contract.

(d) The OSDBU, SADBUS, and SBA are to be notified prior to initiating final action to terminate an 8(a) contract.

319.870 Liaison with the Small Business Administration.

(a) Contracting activities will maintain a continuous liaison with the SBA to ensure that the overall goals of each activity are achieved. In the event there is a dispute between the contracting activity and a SBA representative regarding any aspect of 8(a) contracting, the contracting activity must promptly notify OSDBU.

(b) The business development responsibility of SBA requires them to assist in and monitor the growth and

development of all 8(a) concerns. Therefore, it is incumbent upon HHS to assist SBA in this effort by utilizing the source selection process in a manner that would make use of the largest possible number of 8(a) concerns.

[FR Doc. 90-8189 Filed 4-10-90; 8:45 am]
BILLING CODE 4150-04-M

Proposed Rules

Federal Register
Vol. 55, No. 70
Wednesday, April 11, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Risk Communication as a Regulatory Alternative for Protecting Health, Safety and the Environment

AGENCY: Administrative Conference of the United States.

ACTION: Request for public comments.

SUMMARY: The Administrative Conference's Committee on Regulation has under consideration a draft recommendation on risk communication as a regulatory alternative for protecting health, safety and the environment. Interested persons are invited to comment on the draft recommendation.

DATES: Please submit comments by April 27, 1990.

ADDRESSES: Send comments to David M. Pritzker, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: David M. Pritzker, 202–254–7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Regulation has under consideration a draft recommendation on risk communication as a regulatory alternative for protecting health, safety and the environment. The proposed recommendation is based in part on a draft report written by Professor Michael S. Baram of the Boston University School of Law. The text of the draft recommendation is printed in full below. Copies of Professor Baram's draft report are avilable from the Office of the Chairman of the Administrative Conference.

The Conference's study focused principally on two existing federal programs that require communication of information about hazards to persons who may be at risk:

- The Emergency Planning and Community Right-to-Know Act (title III of the Superfund Amendments and Reauthorization Act of 1986), 42 U.S.C. 11001 (supp. V 1987), administered by the Environmental Protection Agency.

The Occupational Safety and Health Administration's Hazard Communication Standard, 29 CFR 1910.1200 (1989).

The draft recommendation first proposes steps that OSHA and EPA can take to improve these two programs. Other federal agencies with authority to regulate risks to health, safety or the environment are urged to consider whether similar programs would be beneficial. The draft also identifies some basic procedural issues for implementing such programs.

The Conference's Committee on Regulation will meet in early May for further consideration of the draft recommendation in the light of any comments that may be received. At that time, the committee will decide whether to approve a draft recommendation for consideration by the Administrative Conference at its Plenary Session scheduled for June 7 and 8, 1990. Comments should be sent to the address given above.

Draft Recommendation: Risk Communication as a Regulatory Alternative for Protecting Health, Safety and the Environment

Risk communication has become an instrument of federal policy for the social control of hazardous technologies. The term "risk communication" is commonly used to describe procedures by which a public agency or other party possessing information about the hazardous attributes of an activity or product transfers this information to exposed and vulnerable persons or their designated representatives in order to educate and enable them to take actions for reducing risk. For several decades, the Freedom of Information and National Environmental Policy Acts, have, in effect, provided for government risk communication by requiring federal agencies to transfer information they possess on risk and other matters to members of the public on their request.

More recently, Congress and federal agencies have created an additional form of risk communication, one which requires industrial firms to produce and distribute certain information on the hazardous attributes of their activities had products to workers, product users, and the representatives and residents of communities that host industrial activities. These recent enactments are the "right-to-know" laws and rules, establishing risk communication duties for the private sector and concomitant rights to such information for designated parties.

Risk communication programs are now being implemented to foster risk education and reduction in several contexts. The Occupational Safety and Health Administration's (OSHA) "hazard communication" or "worker right-to-know" standard requires firms producing or using designated hazardous chemicals to provide workers with risk information and training on workplace hazards so that the workers will understand the hazards, determine personal risks and take appropriate actions to reduce these risks.

The Federal Emergency Planning and Community Right-to-Know Act (EPCRA), administered by the Environmental Protection Agency (EPA), requires companies producing or using designated hazardous chemicals to provide state and local committees and EPA with information about the chemicals, accident risks, spills, and other actual releases of the chemicals in order to educate these recipients and enable them to develop emergency response plans and other strategies for protecting public health and the environment. The law expressly provides for public access to the information disclosed by industry.

The OSHA and EPA programs have functioned for several years and have had beneficial effects. Workers and community residents now have access to industrial information relevant to their well-being and are beginning to use the information to take protective measures. Worker training and community emergency planning are also being gradually achieved. State and local officials, supported by the new information and subjected to public pressures, are taking legislative and regulatory actions to reduce industrial risk. Companies and trade associations are voluntarily initiating new risk reduction practices to diminish public anxieties and demands for further regulation, and some chemical manufacturers are now voluntarily transferring their superior knowledge of chemical risk management to their downstream commercial customers to enhance marketing, demonstrating that

risk reduction expertise can be used to improve a company's competitive position.

However, these new programs have raised special problems for compliance and agency administration, and have posed new issues as to how their efficacy should be evaluated. Failure to clarify whether the primary purpose is simply to inform and educate persons at risk, or to produce actual behavioral changes, has hindered evaluation and reform efforts.

For example, the OSHA and EPA programs require that three basic functions be carried out by various parties: (i) Producing the reports and other information materials to be disclosed; (ii) distributing the information to persons at risk; and (iii) using the information for developing worker training programs and community emergency response plans. In both programs, the production function is, with several exceptions, being adequately carried out by the designated firms, whereas, despite agency enforcement efforts, compliance with the distribution and use functions in a number of areas is still inadequate.

Agency programs requiring risk communication also have implications for concurrent regulatory efforts and traditional standard-setting that have not been adequately addressed by the agencies or Congress. When these kinds of programs co-exist, they should be mutally supportive, so that dissemination of risk information is not promoted merely as a lower-cost substitute in situations where prescriptive standards might in fact be more appropriate.

The existing risk communication programs pose further difficulties in that they require federal agencies to supervise and coordinate the activities of thousands of private firms, fifty state committees, and over 3000 local committees. However, the agencies' enforcement strategies and capabilities have not developed sufficiently to assure compliance with program requirements. OSHA and EPA, as well as any other agency considering a program of requiring numerous private and public parties to disclose, distribute and use risk information, should develop means of fostering compliance efforts of numerous designated parties, such as by joint government-private sector efforts—for example, by means of a joint council on chemical risk management. OSHA and EPA have identified the need to develop new collaborative relationships with private firms and state and local officials to achieve communication program goals. Current outreach efforts should be expanded as a supplement to agency enforcement strategy for private sector compliance. EPA, while having no enforcement authority under EPCRA against state and local emergency response officials, should nonetheless take steps to monitor and promote their compliance, including use of EPA regional offices for this purpose.

In addition, OSHA and EPA are now aware that the transfer of risk information to workers, local officials and community residents is creating additional needs for interpreting the information and guiding these recipients about appropriate actions to reduce risk. These agencies should therefore cooperate with appropriate state officials to ensure that workers and community residents will be able to understand and use the risk information they receive.

The Conference supports the concept and appropriate use of risk information disclosure as a component of federal regulatory programs. The recommended measures can help ensure that the promise of this policy alternative is fulfilled.

Recommendation

A. Existing Programs of OSHA and EPA

1. OSHA and EPA should undertake a joint effort to improve the format and content of Material Safety Data Sheets (MSDS's), which are informational documents that must be provided and used by various designated parties for diverse purposes under both agencies' risk communication programs.[1] This joint effort should include participation by industrial firms, trade associations, labor and environmental organizations, medical and public health professionals, and state and local officials. OSHA and EPA should consider bringing representatives of these groups together for appropriate negotiations.[2] Particular attention should be given to improving the organization, clarity and readability of the information provided in MSDS's so that they can be used more easily for developing safe workplace practices and worker training activities under the OSHA program and for developing emergency response plans by local officials under the EPA program.

2. OSHA and EPA should undertake a similar joint effort, including the participation of affected private parties, to facilitate the development of uniform MSDS's for the more commonly-used or most hazardous chemical substances. This effort should reduce the confusion caused by the proliferation of different MSDS's for the same substance and duplicative efforts by manufacturers in producing the MSDS's.

3. OSHA and EPA should improve the effectiveness of their compliance programs by providing increased technical assistance and guidance to the parties responsible for distributing and using the disclosed information—for example, by using their regional offices to conduct educational programs designed to promote awareness of program requirements and improve performance by designated parties. These agencies should also develop constructive relationships with industrial firms, trade associations, labor and environmental organizations, health professionals, the media, state and local officials, and affected communities to strengthen the worker training and local emergency response planning functions mandated by the programs.

4. OSHA and EPA should inform and guide state health officials to improve the ability of those officials to provide useful guidance to workers and community residents in interpreting the risk information disclosed under the federal agency programs.

5. OSHA should consider monitoring the performance of state right-to-know programs that are elements of state plans approved by OSHA to be implemented in place of the federal program.

B. Generic Recommendations

6. Each federal agency with authority to regulate risks to health, safety or the environment from commercial activities should evaluate its regulatory program and its statutory authority, in order to determine whether a program to communicate risk information to educate persons at risk (a "right-to-know program") would be beneficial. The agency should also determine whether such a program would be a permissible and useful supplement to the agency's use of other regulatory measures such as standard-setting. If the results of this evaluation are affirmative, the agency should take appropriate steps to develop a cost-effective risk communication program, being careful to prevent conflicts with its standard-setting and other regulatory activities, and ensuring that coexisting programs will be mutually reinforcing.

7. In implementing a right-to-know program, an agency should:

[1] MSDS's contain information about hazardous chemicals, including the identity of the chemical, its physical and chemical characteristics, the nature of the hazards, primary routes of human exposure, permissible exposure limits, appropriate precautions, and first aid procedures. See 29 CFR 1910.1200(g).

[2] See, for example, Procedures for Negotiating Proposed Regulations, 1 CFR 305.82-4 and 305.85-5.

(a) Ensure that the information content and communication procedures are appropriate for the intended purposes including: (i) Informing and educating persons at risk as to hazardous conditions and suitable protective measures; and (ii) informing other parties, such as private firms and public agencies, so that they can discharge their designated responsibilities for producing, distributing and using information appropriately.

(b) Evaluate the performance of the various parties required to produce, distribute and use the information and identify obstacles to achievement of program goals. The agency should then take appropriate remedial actions such as the provisions of assistance to enable the intended recipients of the risk information to understand and use it to reduce risk; and the initiation of cooperative efforts with industrial firms, trade association, labor and other interest groups, and other government agencies to improve the quality and usefulness of risk communication and compliance with program requirements.

(c) Supplement traditional enforcement measures with additional methods for ensuring compliance awareness and performance by designated parties with limited resources or expertise. Agencies should therefore initiate cooperative programs with private firms, trade associations, and state and local officials to promote compliance.

Dated: April 5, 1990.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 90-8444 Filed 4-10-90; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV-89-088PR]

Raisins Produced From Grapes Grown in California; Monitoring Raisins Produced From Grapes Grown Outside the State of California and Received by Handlers Inside the State

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on revising the administrative rules and regulations of the marketing order regulating raisins produced from grapes grown in California. This action would establish an identification and surveillance system for monitoring raisins produced from grapes grown outside the State of California and received by handlers inside the State. This action was unanimously recommended by the Raisin Administrative Committee (RAC), which is responsible for local administration of the marketing order. The proposed monitoring system would provide the RAC with the necessary information to help determine the extent to which California raisin handlers are handling non-California raisins and would be in effect for the 1990–91 and 1991–92 seasons. Once this information is gathered and reviewed, further action on this matter may be warranted to help ensure that all California raisins are being handled in accordance with the provisions of the marketing order.

DATES: Comments must be received by May 11, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2085–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 382–1754.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of raisins who are subject to regulation under the raisin marketing order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts for the last three years of less than $500,000, and small agricultural service firms are define as those whose annual receipts are less than $3,500,000. The majority of producers and a minority of handlers of California raisins may be classified as small entities.

The raisin production area in the United States has historically been limited to the central San Joaquin Valley of California. In recent years, limited tonnage of raisins has also been produced from grapes grown in Southern California. All such raisins are currently regulated under the federal raisin marketing order, which covers raisins produced from grapes grown within the production area of the State of California.

The RAC has learned that some California raisin handlers are receiving raisins produced from grapes grown in Arizona and Mexico. Since these raisins were produced outside of California, they are not regulated under the order. The RAC is concerned that such non-California raisins could be utilized in programs established under the marketing order for California raisins.

For example, an Export Replacement Incentive Program is authorized under the order to promote the sale of California raisins in export markets. Under this program, handlers who ship free tonnage California raisins to approved foreign countries may receive prescribed amounts of reserve pool California raisins at a reduced price. Free tonnage raisins are raisins which may be shipped immediately to any market. Reserves raisins are held by handlers in a reserve pool for the account of the RAC. The RAC is concerned that handlers could ship non-California raisins rather than free tonnage California raisins under this

export program. Only California raisins should be used in such programs established under the order.

Therefore, the RAC has recommended that an identification and surveillance system be established to monitor non-California raisins received by California raisin handlers. Accordingly, non-California raisins received by handlers would be identified, stored separately, reported to the RAC, and kept under surveillance until such raisins are disposed of by handlers. The proposed monitoring system would provide the RAC with the necessary information to help determine the extent to which California raisin handlers are handling non-California raisins.

Under the proposed identification and surveillance system, as non-California raisins are received on handlers' premises, such raisins would be observed and marked with an RAC control card by a U.S. Department of Agriculture (federal) inspector. The inspection service could request information needed to properly mark such raisins for identification (e.g., door receipts or weight certificates). Such raisins would not be subject to incoming inspection requirements established under the order but would be tagged with an RAC control card for the purpose of identifying such raisins as non-California raisins.

The handler would notify the inspection service in writing at least one business day in advance of the time such handler plans to begin receiving non-California raisins, unless a shorter time period is acceptable to the inspection service. Handlers would not be permitted to unload non-California raisins unless a federal inspector was present to observe the unloading. If an inspector was not available, the raisins could be unloaded if the handler had a written statement from the inspection service that an inspector would not be available at that time. When an inspector became available at a later time, such raisins would be properly marked and identified.

Handlers would also be required to store these marked non-California raisins separate and apart from California raisins. Storage of such raisins would be deemed "separate and apart" if the containers are properly marked as non-California raisins and placed so as to be readily and clearly identified.

The inspection service would also observe the processing and disposition of such non-California raisins. Handlers of non-California raisins would notify the inspection service in writing at least one business day in advance of the time such processing and/or disposition is to occur, unless a shorter period is acceptable to the inspection service.

Non-California raisins would not be required to meet outgoing inspection standards established under the order for California raisins. In addition, handlers receiving non-California raisins would pay fees assessed by the inspection service to identify and maintain surveillance of such raisins. Fees for such identification and surveillance would be charged by the inspection service (7 CFR 52.42).

Authority for the establishment of this identification and surveillance system is provided in § 989.36(1) of the order. This section which describes the RAC's specific duties, gives the RAC authority to establish, with the approval of the Secretary, rules and regulations necessary to administer its duties as well as the provisions of the California raisin order.

New reporting provisions proposed by this action would require California raisin handlers to file two new reports with the RAC. The first report would specify the receipt of non-California raisins and would be filed by handlers on a monthly basis. This report is needed to help the RAC determine the extent of which non-California raisins are being received by handlers. This report would contain the following information: (1) the varietal type(s) of non-California raisins received; (2) the net weight (pounds) of such raisins categorized as natural condition or packed for the current month as well as a cumulative quantity from the previous August 1; and (3) The State or country where such raisins were produced. With each report, handlers would be required to submit a copy of the door receipt, weight certificate, or such other document as required by the RAC that includes, but is not limited to, the name of the tenderer (equity holder) from whom such raisins were received, the varietal types of raisins, the net fruit weight, the number and type of containers in the lot, the date of delivery, and the address including State or country where such raisins were produced.

A second report would indicate the disposition of non-California raisins and would be filed by the handler with the RAC on or before the eighth day of each month. This report is needed to help the RAC monitor the disposition of non-California raisins. This report would contain similar information to that which is currently submitted on California raisin shipment reports: (1) The varietal type(s) of non-California raisins shipped; (2) the net weight (pounds) of such raisins shipped; (3) the destination (domestic, export, and other disposition such as distilleries, livestock feeders, or concentrate) of such shipments; and (4) the types of raisin packages (carton, bag, or bulk) shipped.

Authority for requesting these additional reports is contained in § 989.73(d) of the order. This section provides that, upon request of the RAC, with the approval of the Secretary, each handler shall furnish to the RAC such other information as may be necessary to enable the RAC to exercise its powers and perform its duties.

In addition, this action would be temporary in nature in that it would only be in effect for the 1990–91 and 1991–92 seasons. This time period should be sufficient for the RAC to implement the proposed monitoring system, and thus determine the extent to which non-California raisins are being handled by California handlers. Once this information is gathered and reviewed, further action on this matter may be warranted to help ensure that all California raisins are being handled in accordance with the provisions of the marketing order.

This action would require handlers to submit additional information on the receipt and disposition of raisins produced from grapes grown outside the State of California. It is estimated that the additional information would take less than ten minutes per form to complete and thus would present no significant burden to handlers.

Based on the above information, the Administrator of the AMS has determined that issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), the information collection provisions that are included in this proposed rule have been submitted to the Office of Management and Budget (OMB). They will not be made effective until OMB approval has been obtained.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is proposed to be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. A new § 989.157 is added to read as follows:

§ 989.157 Raisins produced from grapes grown outside of California.

(a) Any raisins produced from grapes grown outside the State of California that are received by a handler shall be observed and marked for identification by an inspector. As provided in § 989.173(b)(7), the inspection service may request information needed to properly mark such raisins for identification; it shall be the handler's responsibility to arrange for such identification and furnish required documentation promptly.

(b) In the absence of an inspector to observe and mark such raisins for identification, the handler shall not permit the unloading to occur unless the handler has a written statement from the inspection service that an inspector cannot be furnished within a reasonable time: *Provided,* That raisins so unloaded shall be observed and marked properly upon an inspector being available.

(c) The handler shall notify the inspection service in writing at least one business day in advance of the time such handler plans to begin receiving raisins produced from grapes grown outside the State of California, unless a shorter period is acceptable to the inspection service.

(d) Raisins produced from grapes grown outside of the State of California and received by a handler shall be marked for identification by the inspector affixing to one container on each pallet or to each bin in each lot a prenumbered RAC control card (to be furnished by the Committee) which shall remain affixed until the raisins are processed and disposed of or disposed of as natural condition raisins. The cards shall be removed only by an inspector of the inspection service or authorized Committee personnel.

(e) Each handler shall store raisins produced from grapes grown outside the State of California separate and apart from all other raisins held by such handler to the satisfaction of the Committee. Storage of such raisins shall be deemed "separate and apart" if the containers are marked as raisins produced from grapes grown outside the State of California and placed so as to be readily and clearly identified.

(f) Any raisins received by a handler produced from grapes grown outside the State of California shall be processed and/or disposed of under the surveillance of the inspection service. The handler shall notify the inspection service in writing at least one business day in advance of the time such processing and/or disposition will occur, unless a shorter period is acceptable to the inspection service.

(g) The handler receiving raisins produced from grapes grown outside of California shall pay fees assessed by the inspection service to identify and maintain surveillance of such raisins.

3. Section 989.173 is amended by adding new paragraph (b)(7), by redesignating current paragraph (c)(3) as (c)(4) and adding new (c)(3) to read as follows:

§ 989.173 Reports.

* * * * *

(b)(7) *Receipt of raisins produced from grapes grown outside the State of California.* Each handler who receives raisins produced from grapes grown outside the State of California shall submit to the Committee, on an appropriate form provided by the Committee so that it is received by the Committee not later than the eighth day of each month, a report of the receipt of such raisins. This report shall include: (1) The varietal type of raisins received; (2) the net weight (pounds) of raisins categorized as natural condition or packed for the current month as well as a cumulative quantity from August 1; and (3) the State or country where the raisins were produced. With each report, the handler shall submit a copy of the door receipt, weight certificate, or such other document as required by the Committee that includes, but is not limited to, the name of the tenderer (equity holder) from whom such raisins were received, the varietal type(s) of raisins, the net fruit weight, the number and type of containers in the lot, the date of delivery, and the address including State or country where such raisins were produced.

* * * * *

(c) * * *

(3) *Disposition by handlers of raisins produced from grapes grown outside the State of California.* Each handler who receives raisins produced from grapes grown outside the State of California shall submit to the Committee, on or before the eighth day of each month, a report, on the appropriate form provided by the Committee, of all shipments of such raisins made during the preceding month. This report shall include: (1) The varietal type(s) of raisins shipped; (2) the net weight (pounds) of raisins shipped; (3) the destination (domestic, export, and other disposition such as distilleries, livestock feeders, or concentrate) of such shipments; and (4) the types of raisin packages (carton, bag, or bulk) shipped.

* * * * *

Dated: April 6, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-8377 Filed 4-10-90; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 60, 61, 70, 72, 110 and 150

RIN 3150-AD38

Willful Misconduct by Unlicensed Persons; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule published on April 3, 1990 (55 FR 12374), revising the Commission's regulations to put unlicensed persons on notice that they may be subject to enforcement action (1) for willfully causing a licensee to violate any of the Commission's requirements or (2) for other willful misconduct that (a) arises out of activities within the jurisdiction of the NRC and (b) places in question the NRC's reasonable assurance that licensed activities will be conducted in a manner that provides adequate protection to the public health and safety. This action is necessary to correct the misplacement of a footnote in the Supplementary Information section of the notice.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758.

SUPPLEMENTARY INFORMATION: In the April 3, 1990, edition of the **Federal Register**, make the following correction:

On page 12374, in the third column, remove the first complete paragraph and revise footnote 1 to read as follows:

[1] Licensed activity as used in this context is a broad term, coextensive with the Commission's jurisdiction, that encompasses all of those activities that a licensee or its contractors, employees, or other agents perform to permit the licensee to carry out activities licensed by the Commission in accordance with Commission requirements, whether performed on or off site.

Dated at Bethesda, Maryland, this 5th day of April 1990.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 90-8391 Filed 4-10-90; 8:45 am]

BILLING CODE 7590-01-M

RESOLUTION TRUST CORPORATION

12 CFR Part 1611

RIN 3205-AA04

Retention of Thrift Branches Acquired by Banks in Emergency Acquisitions

AGENCY: Resolution Trust Corporation ("RTC").

ACTION: Notice of proposed rulemaking.

SUMMARY: The RTC is proposing a rule concerning retention and operation by insured banks of branches of failed or failing thrifts acquired pursuant to the emergency acquisition provisions of section 13(k) of the Federal Deposit Insurance Act. The purpose of the proposed rule is to permit insured banks to retain and operate such branches despite provisions of State law that would limit their ability to do so. This action is being taken because the RTC believes that such State laws present a serious impediment to emergency acquisitions of troubled thrifts by banks and increase the cost of resolution of these thrifts.

DATES: Comments must be received by May 11, 1990.

ADDRESSES: Send comments to John M. Buckley, Jr., Executive Secretary, Resolution Trust Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room 7102 on business days between 8:30 a.m. and 5 p.m. (FAX number (202) 347-2773.

FOR FURTHER INFORMATION CONTACT: Thomas Holzman, Legal Division, (202) 906-6738; Martha L. Coulter, Legal Division, (202) 898-7348; Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the proposed rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), it is certified that the proposed rule would not have a significant impact on a substantial number of small entities.

Discussion

Section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73 ("FIRREA"), grants to the RTC the power to authorize emergency acquisitions of failed or failing savings associations.[1] Section 13(k)(1)(A)(i) of the Federal Deposit Insurance Act ("FDI Act"), as added by FIRREA, 12 U.S.C. 1823(k)(1)(A)(i), provides that:

> Notwithstanding any provision of State law, upon determining that severe financial conditions threaten the stability of a significant number of savings associations, or of savings associations possessing significant financial resources, the Corporation, in its discretion and if it determines such authorization would lessen the risk to the Corporation, may authorize—
>
> (I) a savings association that is eligible for assistance pursuant to subsection (c) of this section to merge or consolidate with, or to transfer its assets and liabilities to, any other savings association or any insured bank,
>
> (II) any other savings association to acquire control of such savings association, or
>
> (III) any company to acquire control of such a savings association or to acquire the assets or assume the liabilities thereof.
>
> The Corporation may not authorize any transaction under this subsection unless the Corporation determines that the authorization will not present a substantial risk to the safety or soundness of the savings association to be acquired or any acquiring entity.

The new emergency acquisition provisions further state that "[m]ergers, consolidations, transfers, and acquisitions under this subsection shall be on such terms as the [RTC] shall provide." Section 13(k)(1)(A)(ii) of the FDI Act, as amended.

Under these provisions, the RTC has broad power to authorize emergency acquisitions of failed or failing savings associations (or "thrifts") by banks and bank holding companies, despite any provisions of State law that would otherwise prohibit or restrict such transactions.

One category of State laws that can seriously impede such acquisition transactions are laws that prohibit or restrict branching by State-chartered banks. Some States, such as Colorado and Arkansas, do not presently permit branching by State-chartered banks. Other States, such as Mississippi, otherwise strictly limit bank branching. State law limitations on branching by State-chartered banks are also made applicable to national banks by the McFadden Act, 12 U.S.C. 36, which incorporates those laws by reference. By this incorporation, the McFadden Act maintains competitive equality between State-chartered and national banks. *See e.g., Independent Community Bankers Association of South Dakota, Inc.* v. *Board of Governors of the Federal Reserve System,* 820 F.2d 428, 435 (D.C. Cir. 1987).

State laws limiting bank branching create a significant impediment to emergency acquisitions by banks or bank holding companies of failed or failing thrifts unless the acquiring firm elects to retain the thrift as a separate entity and not merge it into the bank. Generally, States limiting bank branching do not have comparable laws restricting branching by thrifts. Thus, in any case involving acquisition of a troubled thrift in a restrictive jurisdiction in which the thrift is to be absorbed into a bank, a question concerning retention of branches is likely to arise.

Application of State bank branching restrictions in such cases severely impairs the ability of the RTC to use the emergency provisions to facilitate the sale of troubled thrifts because a banking firm interested in acquiring thrifts would be required to separately charter each thrift or thrift branch (or each thrift office located outside of the area in which the bank is permitted to branch) or operate the thrift as a separate entity. The thrift branches are a major asset because it is far less costly for a banking firm to expand by branching than by establishing separate banks in all areas it wishes to serve, a cost efficiency foreclosed to it by State bank branching restrictions. The practical effect of these State laws is that unless a bank can retain an acquired thrift's branching structure, it will be unlikely to bid for a troubled thrift or its bid will be substantially lower due to the costs of chartering and operating the branches as separate banks. Thus, these restrictions reduce the value of the thrifts, making them far less attractive for banks that are eager to acquire the troubled thrifts if they can retain the branching network.

[1] FIRREA section 501 adds a new section 21A(b)(4) to the Federal Home Loan Bank Act, 12 U.S.C. 1441a(b)(4), which grants to the RTC certain powers granted to the Federal Deposit Insurance Corporation ("FDIC") under the Federal Deposit Insurance Act. Among these powers are those granted to the FDIC under section 13 of the Federal Deposit Insurance Act, including the power to authorize emergency acquisitions of failed or failing savings associations.

For example, in a recent transaction in a state prohibiting bank branching, a prospective bank acquiror of two troubled thrifts with seven branches was initially willing to pay a premium of $675,000 for the thrifts provided the branch network could be retained and operated as bank branches. However, the bank's bid was reduced to a premium of $75,000 when it was required to convert the branches to seven separately chartered and individually capitalized banks.

This example, which resulted in a substantial loss of sale proceeds that would have been applied to reduce the amount of public funds required to protect thrift depositors, illustrates the costs and constraints that application of State branching laws can impose on emergency acquisitions. This result is clearly at odds with the stated purpose of FIRREA to use private funds along with public funds to deal expeditiously with failed thrifts (FIRREA section 101(8)) and with the RTC's mandate to resolve thrifts in the most cost-effective manner (section 21A(b)(3)(C)(iv) of the Federal Home Loan Bank Act, as added by (FIRREA).

The subject of branching is specifically addressed in the emergency acquisition provisions by section 13(k)(4) of the FDI Act, as added by FIRREA, 12 U.S.C. 1823(k)(4). Subparagraph (A) of that section provides that:

> If a merger, consolidation, transfer, or acquisition under this subsection involves a savings association * * * and a bank or bank holding company, a savings association may retain and operate any existing branch or branches or any other existing facilities. If the savings association continues to exist as a separate entity, it may establish and operate new branches to the same extent as any savings association that is not affiliated with a bank holding company and the home office of which is located in the same State.

The second sentence of this subparagraph sets out the future branching rights of an acquired savings association that continues to exist as a separate entity following its acquisition by a banking firm. By contrast, the first sentence can most reasonably be read as addressing retention of branches existing at the time of the emergency transaction. However, the first sentence is subject to two plausible readings as a result of the use of the term "savings association" in the second clause, in relation to the terms "merger" and "consolidation" in the first clause. A "Savings association" will not necessarily be (and is highly unlikely to be) the result of a "merger" or "consideration" of a bank and a thrift. Yet, because of the use of the term "savings association" in the second clause, the sentence might not address branching where the resulting entity is a bank.

The most plausible reading of the first sentence, and the one most consistent with RTC staff interpretations, focuses on the use of the terms "merger" and "consolidation." Under this reading, the term "savings association" is read as referring the savings association that has been merged or consolidated with a bank, even though it is no longer a savings association. As so read, this sentence permits the entity resulting from the merger or consolidation, whether a bank or a thrift, to retain all acquired thrift branches existing at the time of the emergency transaction. Because the RTC's proposed rule provides for the same result, it is fully consistent with this reading.

A second but less supportable reading of the first sentence focuses on the term "savings association." Under this reading, that term applies to the institution resulting from an emergency transaction only if that institution is a savings association. If the first sentence is so read, the emergency acquisition provisions remain silent on the matter of retention and operation of the branches of acquired thrifts where the surviving entity is a bank.[2] Because of the critical importance of this matter, the RTC believes it must act to fill any such silence by addressing the matter through a legislative rule. The RTC also believes that Congress, by investing broad discretion in the RTC with regard to the structuring of emergency transactions, has left to the RTC the determination of how best to fill a silence.

The RTC believes such action is necessary because application of State branching restrictions can severely undermine the effectiveness of the emergency acquisition provisions in facilitating sales of failed or failing thrifts and conserving federal deposit insurance resources. The RTC views this impediment as clearly contrary to Congressional intent in enacting the emergency acquisition provisions, one of the express purposes of which is to "lessen the risk to the Corporation."

The RTC recognizes that there are legitimate State interests to be promoted through State branching laws. The RTC also believes, however, that there are critical federal interests to be protected where, as here, substantial demands are to be made upon federal deposit insurance funds. Congressional intent is clear on the face of the statute, which empowers the RTC to authorize emergency acquisition transactions "on such terms as the [RTC] shall provide," and to do so "notwithstanding any provision of State law." Section 13(k)(1).

Except for specific exceptions identified in the statute to this broad grant of power, the RTC believes it must exercise the power in such a manner as will best preserve and protect federal deposit insurance resources. This view is fully consistent with, if not actually required by, the provisions of section 13(k)(1) and other provisions of FIRREA.

Accordingly, the RTC, pursuant to its rulemaking authority under section 21A(b)(12)(A) of the Federal Home Loan Bank Act, as added by section 501 of FIRREA, 12 U.S.C. 1441a(b)(12)(A), proposes to adopt a legislative rule permitting the branches of thrifts acquired pursuant to the emergency acquisition provisions to be retained and operated as bank branches, contrary State law notwithstanding.

The rule the RTC is proposing permits bank retention and operation of each thrift office so acquired, whether the acquisition involves a single thrift or two or more thrifts. As the proposed rule is intended to be applied in the same manner to both State-chartered and national banks, it will fully coincide with the purpose of the McFadden Act to promote competitive equality between State and national banks.

Request for Public Comment

The RTC hereby requests comment on all aspects of the proposed rule, including both legal and policy considerations. In addition, the RTC invites commentors to identify other areas of State law that might raise significant issues with regard to application of the emergency acquisition procedures under section 13(k). Interested persons are invited to submit comments during a 30-day comment period.

List of Subjects in 12 CFR Part 1611

Banks, banking, Branches, branching, Emergency acquisitions of savings associations, Merger Transactions, Savings and Loan Associations.

For the reasons set out in the preamble, the RTC hereby proposes to add part 1611 to title 12, chapter XVI of the Code of Federal Regulations to read as follows:

[2] One court, in granting a temporary restraining order against a bank's retention of acquired thrift branches, concluded that section 13(k)(4)(A) precluded a bank from retaining branches where an acquired thrift is merged into the bank. *State of Colorado* v. *RTC*, No. 90-Z-190 (D. Colo. Feb. 14, 1990). The RTC believes that the decision, which does not explain how the court reached this conclusion fails sufficiently to address the language of section 13(k)(4).

PART 1611—EMERGENCY ACQUISITION OF SAVINGS ASSOCIATIONS

Authority: 12 U.S.C. 1441a(b)(4); 12 U.S.C. 1441a(b)(12)(A); 12 U.S.C. 1823(k).

§ 1611.1 Retention of thrift branches acquired by banks.

(a) Purpose. (1) Section 13(k) of the Federal Deposit Insurance Act (12 U.S.C. 1823(k)), made applicable to the RTC by section 21A(b)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(4)), grants to the RTC the power to authorize emergency acquisitions of failed or failing savings associations. Under section 13(k), the RTC may authorize such acquisitions notwithstanding any provision of State law, upon making a determination that severe financial conditions threaten the stability of savings associations and a determination that such authorization would lessen the risk to the RTC. Authorizations of acquisitions of State-chartered savings associations are subject to prior RTC consultation with State officials and a vote of 75 percent of the voting members of the RTC Board of Directors to authorize such acquisitions over the objection of State officials.

(2) The regulations of this section provide for the retention and operation by acquiring banks of the offices of savings associations acquired pursuant to section 13(k).

(b) Each existing office or other existing facility of each savings association that is merged or consolidated with, or the assets and liabilities of which are transferred to, an insured bank pursuant to section 13(k) may be retained by the insured bank and operated by the bank as a branch or other facility.

By order of the Board of Directors, dated at Washington, DC., this 3rd day of April, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90-8219 Filed 4-10-90; 8:45 am]

BILLING CODE 6714-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 156

Proposed Regulation Requiring Registration of Broker Associations

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing part 156, 17 CFR Part 156, which would require contract markets to adopt rules that define entities commonly known as "broker associations" and that require such entities to register with their respective contract markets. The proposed regulations would prohibit a member of a broker association from receiving orders, executing transactions or otherwise acting in furtherance of a broker association unless the broker association is registered with its respective contract market. Each contract market also would be required to maintain equivalent rules. The Commission would require each contract market to implement procedures necessary to ensure that registration procedures are followed and to ensure that registration procedures are followed and to integrate the data collected from registration into its affirmative compliance programs.

DATES: Comments on proposed part 156 must be received on or before June 11,1990.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Christopher K. Bowen, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Notice

The total public reporting burden for the collection of information which includes this proposed regulation is estimated to average 81.83 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the entire collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joe F. Mink, CFTC Clearance Officer, 2033 K Street, N.W., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project (3038-0022), Washington, DC 20503.

II. Background

A. Commission Study

The term "broker association" generally refers to two or more contract market members who have established a relationship in order, among other things, to service customer orders and to increase the financial resources available to individual members to cover any liabilities incurred while servicing customer orders, *i.e.*, trading errors and/or losses resulting from out-trades. These relationships often are characterized by shared employment, shared access to customer orders or shared profits and losses.

As part of its ongoing oversight of trade practice programs, in July 1989 the Commission directed the Division of Trading and Markets ("Division") to conduct a study of the organization and trading practices of broker associations.[1] The Division sought to identify the reasons for the establishment of broker associations, the forms which they take, the services which they provide, and the nature of the financial and trading relationships among association members. The Division also sought to evaluate whether these types of relationships might lead to trading abuses or have other disadvantages.

As part of the Broker Association Study, the Division examined existing and proposed exchanges rules governing broker associations. The Division also interviewed members of broker associations at the Chicago Mercantile Exchange ("CME") and the Commodity Exchange, Inc. ("Comex") and certain market participants, such as futures commission merchants "(FCMs"), which use the services of broker associations.

The Division determined that, at the time of the study, four exchanges, the CME, Comex, New York Mercantile Exchange ("NYMEX") and New York Futures Exchange ("NYFE"), had rules which explicitly defined associations or affiliations of brokers. At those exchanges, compliance programs address the activity among broker association members. Of these four, the CME and Comex required the registration of broker associations or affiliations and their members.[2] One exchange, the CME, set specific limitations on the percentage of personal trades and customer orders that a registered broker association member could execute opposite other members of his association. Other

[1] *See* Division of Trading and Markets, Study on Broker Associations (January 4, 1990) ("Broker Association Study"). Copies of this report are available to the public.

[2] On December 11, 1989, the Coffee, Sugar & Cocoa Exchange ("CSC") submitted rules which require the registration of broker associations. Pursuant to Regulation 1.41(c), the Commission allowed the rules to go into effect.

exchanges, such as Comex and NYMEX, treat the execution of customer orders between affiliated members as cross trades. These trades then must be executed in accordance with the rules of the respective exchange relating to the execution and reporting of cross trades.

The Division's interviews of broker association members and market participants which use broker association services found that these market users believe there are several advantages to using a broker association to execute trades. For example, broker associations which combine the financial resources of their members may be better capitalized than individual independent brokers and, therefore, may be better able to finance losses attributable to errors or outtrades. Further, floor members who are absent from the floor can direct a customer order to another member of the association, assuring uninterrupted service. Broker associations also may provide specialized order execution expertise, such as with respect to various types of spread orders, and can react to different market conditions by placing more brokers in an active pit or by moving brokers from one pit to another. In addition, some broker associations reported that they monitor personal trading of their members to ensure that these members are not overreaching financially and that personal trading is not interfering with customer order execution.

The Division study also raised concerns, however, that the relationships among brokers may increase the potential for trading abuses. The pre-existing relationships or agreements among broker association members may facilitate violative trading activity. For example, members of a broker association may use the information gained through access to each others' customer orders to trade ahead of a customer, to prefer a favored customer, or to assist each other in indirectly bucketing or taking the opposite side of customer orders. In addition, formal or informal arrangements to share profits and losses may increase the potential for members of an association to act as accommodating traders for each other. For example, association members might illegally trade with each other to cover trading losses.

On January 4, 1990, the Division presented its Broker Association Study to the Commission and recommended that the Commission "take steps through rulemaking to require the identification of broker association members and to monitor their trading activity." [3] The Division recommended that the Commission adopt regulations which would (1) define the term "broker association" in a manner consistent with the study; (2) require exchanges to define as "broker associations" those relationships covered by the Commission definition; (3) require registration of broker associations with their respective exchanges; and (4) require exchanges to demonstrate effective use of the information made available through registration to detect, deter and prosecute abuses by association members.[4]

The Commission, based upon its review of the Broker Association Study and other available information, has decided to propose for comment part 156 regulations which would improve exchange surveillance capabilities by requiring, among other things, registration of broker associations. The Commission believes that broker associations may enhance order execution capabilities of individual members. The Commission also recognizes, however, that trading information available to, and the common financial interests of, members of broker associations may create the potential for certain trading abuses, such as noncompetitive trading or trading ahead of customer orders. The Commission believes that, if implemented, the proposed regulations would provide the data necessary to ensure that all exchanges have the capacity to conduct enhanced surveillance of broker association trading and to assess more effectively the costs and benefits of such associations' activities. The Commission also believes that the proposed regulations would provide the information necessary from which to evaluate further broker association activity.

B. Existing Exchange Practices

At present, five futures exchanges specifically monitor the trading activity of broker associations or similar affiliations of brokers. The extent of exchange enforcement activities, however, varies with respect to the types of relationships subject to exchange regulation and with respect to the use that exchanges make of the information collected regarding these relationships.

As noted above, the CME, Comex and CSC are the only exchanges which require the registration of broker associations. The CME requires that a broker association be registered with the Exchange before a floor broker who is a member of that association can execute an order on behalf of a customer.[5] The CME includes within the definition of "broker association" legal entities formally organized to share brokerage fees, expenses, profits and losses, and less formal associations that develop primarily out of an individual broker's need for order execution assistance.[6] CME rules require that a broker association provide certain identifying information to the Exchange, including the names and account numbers of all principals, associates, investors, partners and shareholders of the association, and the legal form of the association.[7] This information is maintained by the Exchange and is used in its trade surveillance program.

The CME also regulates broker associations by applying express limitations on the percentage of personal trades and customer orders that a member of an association may execute opposite other association members.[8] Currently, these percentage limitations are established at 15% for personal trading and 25% for customer orders and are applied to a member's monthly trading activity by contract. The specific grading restrictions are defined by the Broker Association Committee and pertain only to the most active months of trading in any futures contract.[9]

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[3] Broker Association Study at 60.

[4] *Id.* at 61–65.

[5] CME Rule 515.B.1.

[6] CME Rule 515.A. Informal associations generally are covered by the CME's inclusion of "Affiliated Broker Associations" in its broker association definition. These affiliated associations are defined as brokers who regularly share customer orders and/or employee salary expenses (*e.g.*, clerks). CME Rule 515.A.1.c.

[7] CME Rule 515.B.2.

[8] CME Rule 515.E. The rule specifically states, "[t]he board [Board of Governors] shall establish limits on the percentage of personal trading during Regular Trading Hours between a member of a broker association and other members of broker associations with which he is affiliated." With respect to brokerage activity, the rule additionally provides, "[t]he Board shall establish limits on the percentage of customers orders (defined as CTI type 2, 3 and 4 trades) that a member of a broker association may fill opposite other members of broker associations with which he is affiliated."

[9] On September 11, 1989, the CME proposed amendments to its broker association rules which, among other things, would define "for profit" broker associations, would prohibit "for profit" broker association members from trading for their personal account opposite others in the same association executing customer orders, and would reduce the percentatge limitations on members trading for personal accounts with others executing customer orders. At the Exchange's request, the Commisison has stayed review of the amendments pending further modification.

Comex requires that "affiliated brokers" register their affiliations with the Exchange. Comex Rule 2.33(c) requires that any Exchange member or member firm which is affiliated as a partner, shareholder, joint venturer, employee or otherwise with any other person register with the Exchange and file a memorandum listing every person and firm with whom the member or member firm is so affiliated, the place(s) of business of the member or member firm, and the nature of the affiliation. Pursuant to Comex Rule 4.24, relationships constitute an affiliation if they are between or among employer and employee, employees of the same employer, or partners of a partnership. In addition, similar to the CME, Comex rules apply to certain informal relationships. In this regard, the rules state that members who trade customer orders and are temporarily acting as affiliated brokers are deemed to be affiliated.[10]

Comex uses the identifying data in its general trade practice surveillance program and specifically to determine whether its required cross trade procedures were followed. For instance, if the Exchange, in its routine review of trading activity, detects suspicious trading activity, it may attempt to determine whether the persons involved were affiliated in some way. The information also may be used in the first instance to detect suspicious patterns of trading activity among affiliated members. With respect to cross trade surveillance, trades between two members who are affiliated within Comex's definition are treated as cross trades. Comex rules require that all cross trades be executed by open outcry in accordance with specific procedures required by Commission regulations.[11] The Exchange's Compliance Department uses broker association registration data to ensure that such trades are effected in accordance with these procedures.

The CSC recently enacted rules which require a member to file with the Exchange a list of all floor brokers with whom the member is associated and designates such members as "associated brokers." [12] Associated brokers include the same legal affiliation is covered by the Comex rule as well as officers, directors and 10% shareholders of the same corporation. The CSC's definition also covers informal relationships by including brokers who frequently share decks of customer orders and/or share employee expenses, and brokers who share fees, revenues, and profits and losses from "business transacted on the Exchange." [13] CSC rules require that associated brokers execute customer orders opposite each other pursuant to the Exchange's cross trade rule.[14]

Before the CSC enacted its registration rules, the Exchange's Compliance Department informally identified broker associations in the course of its daily cross trade reviews. If potential cross trade violations were detected, the staff determined whether these violations occurred between associated members. The CSC's registration rules are intended to enable the Exchange to identify broker associations more efficiently.

The NYMEX and NYFE provide for the identification of broker affiliations but do not have a formal registration requirement. At NYMEX, trades between certain affiliated members are required to be executed as cross trades. As with the Comex, the NYMEX defines affiliated brokers by reference to their legal structure. The relationships identified by the NYMEX as constituting an affiliation include employer and employee, employees of the same employer, partners of a partnership, and officers, directors and 10% shareholders of a corporation.[15] As part of the NYMEX's initial membership requirements, a member must provide certain identifying information to the Exchange, including identification of any organization where such member is employed or serves as a partner or shareholder. As with the CSC, the NYMEX uses the information maintained by its membership department to monitor trading activity of affiliated brokers in the course of its cross trade reviews.

AT the NYFE, in the context of its trade surveillance program, the Exchange reviews affiliated brokers' trading activity to identify possible preferential trading among members. NYFE Rule 3 states that a person is affiliated with an individual or organization if that person acts as a stockholder, partner, officer, director, trustee, or employee.[16]

In the course of their surveillance of broker associations, exchanges have identified a number of instances of abusive trading activity by association members.[17] Specifically, during 1988 and 1989, Comex investigated nine cases of violative activity among affiliated brokers. In the four largest of these cases, the brokers were sanctioned for such violations as non-competitive trading, trading against customer orders, prearranged trading, and illegal cross trades. Each case resulted in major fines and suspensions of members from trading; one member firm was fined $200,000. These cases generally involved affiliated members who had a common employer and shared clerical personnel. In two instances, the affiliation involved temporary shared responsibility for execution of customer orders. Similarly, NYMEX conducted 29 investigations of cross trades between affiliated members, resulting in one major disciplinary action against two members for prearranged trading; other actions were pending at the time of the Broker Association Study. These cases generally involved employees of the same employer or partners of a partnership. In 1987, NYFE sanctioned seven members of an affiliation for disclosure of orders, prearranged trading, taking the opposite side of customer orders, noncompetitive trading, and accommodation trading based on a pattern of excessive trading among the brokers. Those cases involved affiliated members who shared floor booth space and used the same clerks.

At the CME, its enforcement focus has been on member compliance with its trading and brokerage limitations. Eight members have been fined a total of $415,500 for engaging in prearranged trading to circumvent those limitations. Also, the CME, issued 149 warning letters and 17 fines totalling $480,000 for violations of the personal trading limits

[10] Comex Rule 4.24(a)(4).

[11] 17 CFR 1.39.

[12] CSC Rule 1.12(b)(2).

[13] CSC Rule Definitions, ¶ 206. A borker's "deck" consists of all customer orders, executable or non-executable, which that broker is holding at any point in time.

[14] CSC Rule 3.03(c).

[15] NYMEX Rule 8.42(C). On May 9, 1989, the NYMEX Regulatory Task Force issued a report to the Exchange's Board of Directors which, among other things, recommended that the Exchange require registraton of broker associations. To date, NYMEX has not submitted any registration rules to the Commission.

[16] Both the Chicago Board of Trade ("CBT") and the New York Cotton Exchange ("NYCE") have taken steps to recognize broker associations. On May 25, 1989, the CBT submitted a proposed rule which would require registration of floor broker associations. At the Division's suggestion, the CBT is revising its submission. At NYCE, the Board of Managers in June 1989 authorized the executive committee to establish a definition and implement a registration procedure for associated brokers. In addition, it was proposed that any broker with a financial interest in the on-floor trading of another member report such interest to the Exchange. The Commission has not received any implementing rules from the Exchange.

[17] Of course, at exchanges where there currently are no specific broker association requirements, trade practice surveillance programs intended to detect noncompetitive trading and other such substantive trading abuses could detect such activity when engaged in by affiliated members. The purpose of the proposed regulation is to ensure that exchanges focus on these affiliations.

and 51 warning letters and 25 fines totalling $91,000 for violations involving the limits on trading for customer orders.

Accordingly, there is currently a range of self-regulatory programs intended to provide specifically for enhanced monitoring of affiliated broker activity. The Commission's proposed regulations would assure that all exchanges have this capability and that exchange programs satisfy uniform minimum standards.

III. Proposed Part 156 Regulations

Proposed part 156 would (1) establish a definition of broker associations; (2) require exchanges to implement registration procedures for broker associations; (3) prohibit any broker association member from receiving orders, executing transactions or acting in furtherance of the broker association unless the association is registered; and (4) require exchanges to intergrate procedures to monitor the trading activity of broker associations into their overall surveillance programs.

The proposed regulations would create and important surveillance tool for use by the exchanges and the Commission in monitoring for substantive trading abuses by affiliated members. The proposal would prohibit conduct by contract market members as an unregistered broker association to assure compliance with the registration requirement. The proposal would not impose any other restriction on the conduct of any member or market user. However, exchanges could impose additional requirements on broker association members such as the trading and brokerage limitations currently in place at the CME.

A. Proposed Regulation 156.1: Definition of Broker Association

Proposed Regulation 156.1 defines the member affiliations that would be deemed to constitute a "broker association." The proposed definition would include both formal and informal relationships. For the most part, existing exchange rules regarding broker associations recognize formal legal relationships among brokers, such as partnerships and corporations, but do not uniformly address informal relationships. In formulating its proposed definition, the Commission focused on the characteristics common to formal and informal relationships and the potential for such characteristics to lead to conduct conducive to trading abuse. The proposed definition identifies three types of relationships: shared responsibility for executive customer orders; shared access to customer orders; and shared profits or losses associated with brokerage or other trading activity.

The Commission specifically requests comment regarding the scope and each of the components of the proposed broker association definition, including the manner in which informal affiliations should be addressed. In that connection, the exchanges which currently have rules regarding affiliated members are requested to comment on the relationship between the proposed definition and the operation of their rules.

1. Shared Responsibility for Execution of Customer Orders

Under the proposed regulation, any two or more exchange members who share responsibility for executing customer orders would be a "broker association." As a consequence, the definition includes deck sharing arrangements, such as when a member hands off his deck or any individual orders to another member before leaving the floor. These types of arrangements provide the participating brokers with knowledge of each other's customer orders, causing an increased potential for trading violations, such as trading ahead or otherwise taking advantage of a customer order. Although the definition is broad enough to encompass a single instance where a member shares orders or hands off an order to another member, the Commission requests comment on what would be an appropriate amount of activity to exempt from coverage. The Commission also requests comment on whether exchanges should, by rule and consistent with the purposes of this proposed regulation, be permitted to exempt such minimal levels of activity or whether the Commission should do so in the final regulations.[18]

2. Shared Access to Customer Orders

The proposed definition also would include members who have access to some or all of each other's unfilled customer orders either as the result of common employment, a shared clerk, or other types of relationships. This in intended to cover broker relationships where access to customer orders results from circumstances other than the relationships involving shared execution responsibility discussed above. For example, brokers employed by the same FCM may have shared access to the FCM's customer orders through common access to the FCM's wire and phone desks or its clerks. Similarly, affiliated brokers who share a clerk may have access to each other's orders through the clerk. Thus, all relationships which may provide such access, notwithstanding the fact that access cannot readily be demonstrated or that the broker association's practices do not intend that such access be available, would be covered.

As a result of shared access to customer orders, each of the members of both formal and informal associations can discover information about customer orders handled by other members of an association. In both types of relationships, the customer order information might be used by members to abuse those customer orders directly. The information also would increase the potential for members to conspire to abuse customer orders. The Commission specifically requests comment on this aspect of the proposal, including whether there are shared clerk or other arrangements where there is no increased potential for one member to gain access to another's customer orders.

3. Shared Profits and Losses

In addition, under proposed Regulation 156.1, any members who share profits or losses associated with brokerage or other trading activity would be a "broker association." With respect to brokerage activity, such profits generally are derived from commissions received from the execution of customer orders. There may also, however, the arrangements with a broker association or among its members to share profits or losses resulting from their trading activity for personal or proprietary accounts.

If two or more contract market members have a profit-sharing relationship, including but not limited to a partnership or other contractual relationships, there is an added incentive for those members to trade with each other. In order to obtain shared profits or to receive shared commissions, members may be more likely to engage in noncompetitive trades. In addition, those traders, in some cases, may have knowledge of customer orders held by other association members which also would facilitate potential trading abuses.[19]

[18] For example, such an exchange rule could refer to the amount of activity which could occur without requiring registration of the participating members as a broker association.

[19] Exchanges which currently require registratioin of broker associations vary in the extent to which they may address the internal relationships encompassed by the proposed regulation. The CME rule may be coextensive with the proposed regulation. The CSC appears to cover the same activities and relationships mentioned in the proposed regulation except that deck sharing and/

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The proposed regulation does not address relationships among broker associations, that is, whether all the members of two or more broker associations which have members in common should be deemed to be affiliated.[20] The proposed regulation is intended to provide sufficient information to monitor effectively for potential trading abuses arising from relationships between and among broker associations which have common members. The Commission nonetheless requests comment on whether multiple memberships should be addressed more particularly in the proposed definition. Of course, consistent with the characteristics of their markets, exchanges may determine to include other broker relationships not expressly covered by the proposed regulation.

B. Proposed Regulation 156.2: Registration of Broker Associations

1. *Regulation 156.2(a): Commission Enforcement.* Proposed Regulation 156.2(a) would prohibit a broker association member from receiving orders, executing a transaction, or otherwise acting in furtherance of a broker association unless the broker association is registered with the appropriate contract market. Although the exchanges would be responsible for association registration with respect to their particular markets, this provision would make a failure to register a violation of the proposed regulations which could be enforced directly by the Commission against the individual members of the association.

The regulation specifies those activities performed by affiliated members which would serve as the basis for Commission enforcement. These activities include the receipt of orders by a member from any other member, whether or not the receiving member executes the order. The execution of a transaction, whether for a customer or other type of account, also is included. The regulation also reaches activities which do not directly involve the receipt or execution of orders but otherwise would further the business of a broker association. Such activities could include, among other things, the performance of broker association administrative functions, such as client contact or supervision of members, and the solicitation of business on behalf of the broker association.

2. *Regulation 156.2(b): Registration with Contract Market.* Proposed Regulation 156.2(b) would mandate that each contract market maintain in effect rules that, at a minimum, define the term "broker association" to include those relationships set forth in proposed Regulation 156.1 of this part, prohibit a member from acting as a part of a broker association in the manner described in proposed Regulation 156.2(a), and require registration of broker associations with their respective contract markets.

Although the proposed regulation requires that all broker associations be registered, it does not expressly state whether the broker association, its members, or specifically designated individuals would be responsible for compliance with the administrative requirements for registration. The Commission believes that each contract market should determine the most effective means for assuring compliance. Since each contract market would be responsible for collecting registration data and integrating that data into its compliance programs, the contract market, subject to Commission oversight, should decide how best to collect the necessary registration data.

Currently, exchanges approach allocation of such responsibility differently. The CSC requires that each member of an affiliation register with the Exchange. The CME requires that the broker association and its principals assure the proper registration of the association.[21] Comex requires that affiliations be reported by the member or member firm.[22] The Commission requests comment on whether it should develop more specific registration procedures.

The proposed regulation sets forth the minimum information which the Commission believes is necessary for the identification of relationships between broker association members and thus is necessary to the effective surveillance of potential trade practice abuses by members of broker associations. The required information is as follows:[23]

(i) Name of the broker association;

(ii) Names of all employees, names and status of all partners, shareholders, investors and contract market members;

(iii) Badge symbols of all floor members;

(iv) Account numbers for all accounts of any member, accounts in which any association member or members have an interest, and any proprietary or customer accounts controlled by a member or members of the association;

(v) Identification of all other broker associations with which each member is associated;

(vi) Legal form of the broker association; and

(vii) Individual(s), if any, authorized to represent the association.

In order to assure the continued usefulness of such information for monitoring purposes, the proposed regulation also requires that, in the event of any deficiency or inaccuracy in the registration information, such information must be updated promptly.

In its Broker Association Study, the Division suggested the possibility that registration of broker associations and their members might be carried out through the National Futures Association ("NFA").[24] Although the registration requirement is directed to the contract markets, the Commission requests comment on whether such registration functions may be contracted out to the NFA without adversely affecting an exchange's ability to monitor effectively the trading activity of such associations. In any such arrangement, as a practical matter, the contract market would have to retain immediate access to registration information to permit such monitoring.

C. Proposed Regulation 156.3: Contract Market Program for Enforcement

Proposed Regulation 156.3 would require each contract market to implement a program to monitor the trading activity of broker association members that is integrated with the contract market's overall trade practice surveillance program. This regulation is intended to ensure that the information collected through the registration process is used effectively by the exchanges to detect and deter potential abuses which may be facilitated by broker association relationships.

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or employee salary expense sharing must be frequent. At Comex, the affiliation definition refers to whether members are permanently or temporarily acting as partners, employees of the same employer, or are in an employer-employee relationship. Thus, the Comex definition, as applied, may cover less activity than the proposed regulation.

[20] For example, the CME rules regarding broker associations state that different broker associations in the same pit which have one or more principals in common shall be deemed a broker association for trading limitation purposes. CME Rule 515.E. The CME rules also state that a "trading group" shall be deemed to be a member of each broker association to which a member of that group belongs. A "trading group" is defined as an association of two or more exchange members who directly or indirectly share trading revenue. CME Rule 515.A.4.

[21] CME Rule 515.B.3. A principal is defined as an individual who has formal and/or de facto control over the affairs of the association. Each principal must be an equity member of the Exchange. CME Rule 515.A.2.

[22] Comex Rule 2.33(c).

[23] In general, the information collection requirements set forth in the proposed regulation would be more extensive than any required by current exchange rules.

[24] Broker Association Study at 64.

The Commission expects that any exchange surveillance system would be able to identify broker association members, their trading activity, and patterns of trading between and among these members. For instance, with respect to computer-assisted surveillance programs, exchanges may elect to supplement existing reports with broker association identifying information in order to facilitate a more thorough evaluation of whether potentially violative trading activity may have occurred. Moreover, such information could provide a mechanism for the adoption of additional parameters or the modification of existing parameters in programs designed to isolate potential trading violations. These programs could be tailored to focus on broker associations.

With respect to non-computerized surveillance activity, exchanges could enhance their floor surveillance capabilities by making staff aware of the associations operating in the trading pit(s) being examined. Based on floor surveillance and other exchange compliance activities which result in staff awareness of member relationships, compliance could identify informal unregistered broker associations. Further, exchange compliance staff should routinely include within the scope of an investigation of a broker association member consideration of trading activity with other members of the association.

The CME's use of broker association registration information and its programs for enforcement of trading restrictions provide an example of how an exchange may approach integrating registration information into its compliance program. The Exchange maintains a Registration of Broker Association report on its Computer Assisted Trade Surveillance System ("CATSS"). This report includes such information as the member's social security number, broker code, association's principals, date of registration, and name of association.

Compliance staff also monitors compliance with the percentage limitations in Rule 515 by reviewing weekly broker association trading activity identified in statistical reports generated by CATSS. The report shows a member's total trades, the number of personal trades filled opposite his association's members, and the percentage of such personal trading. In addition, the report shows the total number of customer trades of the member, the number of customer orders filled opposite his association's members, and the percentage of customer trades executed within the association. To keep members apprised of their compliance with trading limitations, the Exchange sends each broker association member a record of his trading activity weekly. On a monthly basis, compliance reviews the report to identify brokers exceeding the 15/25 percent parameters of Rule 515.E. Finally, CME staff monitors the trading activity of broker association members in the course of its regular trade practice surveillance program. The Exchange has stated that it is cognizant of members' affiliations and is able to focus its surveillance accordingly in order to detect more effectively potentital trade practice violations between association members.

The proposed regulation would not require that an exchange employ any particular method for integrating broker association registration information into its compliance program. The Commission believes that each exchange should retain the flexibility to tailor implementation to its existing compliance systems. The Commission specifically requests comment regarding the ability of exchanges to incorporate effectively within their surveillance programs the broker association registration data that would be available pursuant to the proposal.

IV. Conclusion

Although the relationships involved in broker associations appear to have been developed to enhance order execution and brokers' financial resources, they also may increase the potential for trading abuses. The Commission, therefore, believes it is necessary for exchanges to implement rules which focus on such relationships to deter and enhance the detection of such abuses. For example, certain trading abuses, when effected by members of a broker association, can be more easily identified if compliance staffs are made aware of the relationships and identities of broker associations and their members. Experience and information gained as a result of such programs also can provide the basis for further evaluation of broker association activity. Toward that end, the exchanges should use their registration and monitoring programs to compile data on the extent of broker association trading and any particular problems or patterns noted with respect to that activity. The Commission expects that, as part of its oversight program, it will direct its staff periodically to request that exchanges submit reports containing such information.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of the rules on small businesses. Proposed part 156 would affect contract markets, FCMs, contract market members, and broker associations.

The Commission previously has determined that contract markets are not "small entities" for the purposes of the RFA, and that the Commission, therefore, need not consider the effect of the proposed regulations on contract markets. 47 FR 18618, 18619, April 30, 1982. The Commission has determined that FCMs should be excluded from the definition of "small entity" based upon the fiduciary nature of the FCM/customer relationship as well as the fact that FCMs must meet minimum financial requirements. 47 FR 18618, 18619, April 30, 1982.

With respect to contract market members, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all members that would be affected by the rule should be considered small entities, and, if so, to analyze the economic impact on such entities at that time. 47 FR 18618, 18620, April 30, 1982. Contract market members are potentially subject to the proposed regulations. The Commission recognizes that certain contract market members could be considered to be small entities for the purposes of the RFA. With respect to broker associations, the Commission also recognizes that certain broker associations could be considered small entities for the purposes at the RFA. Broker associations are broadly defined such that their membership could be comprised of as few as two members. Although broker associations with large memberships and those comprised of FCM employees may not be considered small entities, the Commission believes that associations may exist which are sufficiently small so as to be covered by the RFA.

Regardless of whether contract market members or broker associations are small entities, the Commission believes that the proposed regulation is designed so that it can be implemented without imposing a significant economic burden on a substantial number of small entities. Under the proposed regulation, each contract market may elect to place the administrative responsibility for registration on the broker association, its members, or a designated individual. This requirement would not restrict the

two factors which would have the greatest economic impact on members and broker associations: The ability of members to associate and the extent to which members of an association trade with each other or with anyone else.

In addition, contract market members already are required by exchange rule to file information substantially similar to the information that would be required by the proposed regulation. When a person applies for membership at an exchange, that person is required to supply identifying information. For example, at NYMEX, an applicant for membership is required to supply the Exchange with, among other information, the applicant's corporate affiliations. The Comex rules provide that an applicant for membership "shall submit such information as may be required by the Admissions Committee with respect to the applicant's business affiliations, background, experience and integrity." [25] Exchanges also impose ongoing reporting requirements on contract market members. For instance, at NYMEX, members are required to report, among other things, adverse changes in financial condition or a change in the relationship with a guarantor member firm or clearing member.[26] As a result, the requirements of the proposed regulation should not subject contract market members to a significant economic burden.

With respect to broker associations, the type and volume of information that would be required to be compiled would be substantially similar to the information compiled as described above. Thus, rather than imposing a separate and distinct information gathering process, a broker association or member generally would be processing information which previously was compiled by the member.

As noted above, at several exchanges, broker associations and their members already are subject to informational reporting requirements. At CME, broker associations are required to file information virtually identical to the information required by the proposed regulation.[27] Comex requires that affiliated members and corporate entities register with the Exchange and file a memorandum listing every person and firm with whom they are affiliated, the place(s) of business of the member or member firm, and the nature of the affiliation.[28] A recent CSC rule requires that any member who acts as an associated broker file a written notice listing those brokers with whom the member is associated.[29] To the extent that such existing exchange registration provisions may comply with the proposed regulation, neither broker associations nor their members should be subject to a substantial economic burden by virtue of the proposed regulation. At the exchanges which require registration of broker associations, there already is a mechanism in place to implement the requirements of the proposed regulation. Moreover, in light of the requirements of these exchanges for the collection of such information, the proposed regulation should not impose a significant economic burden on a substantial number of small entities.

In addition, floor brokers already are subject to filing requirements under the Commodity Exchange Act ("Act"). Sections 4e and 4f of the Act require that floor brokers register with the Commission and that floor brokers give such information to the Commission as the Commission deems necessary. because the character of information which would be required by the proposed regulation is substantially similar to information already provided by those members who may be affected, the potential burden should not be significant either in cost or time spent providing the information. This should be true even if the exchanges elect to implement the registration requirement through a separate process.

Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1168 (5 U.S.C. 605(b)), based on its initial reviews of the available data, the Chairman certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Commission will evaluate any additional data provided to the record to suggest that this proposal would have a significant impact on small entities in determining whether to complete a regulatory flexibility analysis with the final rulemaking. The Commission invites specific comment regarding the potential cost of this proposal for small entities and alternative less burdensome means to achieve the Commission's objectives.

[25] Comex Rule 2.03(b).
[26] NYMEX Rule 2.42.
[27] CME Rule 515.B.2.
[28] Comex Rule 2.33(c).
[29] CSC Rule 1.12(b)(2). Furthermore, several of the rule proposals contemplated at other exchanges would impose a registration requirement which would include some form of information reporting. Broker Association Study at 57–58.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection, including this proposed rule is as follows:

Average burden hours per response	81.83
Number of respondents	1322
Frequency of response	on occasion

The burden associated with this rule only is borne by broker associations and their respective changes and is as follows:

Average burden hours per response	2.033
Number of respondents	800
Frequency of response	annually

Persons wishing to comment on the estimated paperwork burden associated with this proposed rule should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254–9735.

List of Subjects in 17 CFR Part 156

Broker associations, Commodity futures, Contract markets, Members of contract markets, Registration requirement.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4b, 4c, 5(b) and 8a(5) thereof, 7 U.S.C. 6b, 6c, 7(b) and 12a(5), the Commission hereby proposes to add Part 156, chapter 1 of title 17 of the Code of Federal Regulations to read as follows:

PART 156—BROKER ASSOCIATIONS

17 CFR part 156 is proposed to be added to read as follows:

PART 156—BROKER ASSOCIATIONS

Sec.
156.1 Definition.
156.2 Registration of broker association.
156.3 Contract market program for enforcement.

Authority: 7 U.S.C. 6b, 6c, 7(b), and 12a(5).

§ 156.1 Definition.

For the purposes of this part, the term "broker association" shall include two or more contract market members who

(1) share responsibility for executing customer orders,

(2) have access to each other's unfilled customer orders as a result of common employment, a shared clerk, or other types of relationships, or

(3) share profits or losses associated with their brokerage or trading activity.

§ 156.2 Registration of broker association.

(a) *Registration required.* It shall be unlawful for any member of a broker association to:

(1) receive orders,

(2) execute a transation or

(3) engage in any activity in furtherance of a broker association, unless such entity has been registered with the appropriate contract market in accordance with part (b) of this section.

(b) *Contract market rules required.* Each contract market must maintain in effect rules, which have been submitted to the Commission pursuant to section 5a(12) of the Act and Commission Regulation 1.41, that at a minimum:

(1) define the term "broker association" to include those relationships set forth in section 156.1 of this part,

(2) prohibit the conduct described in paragraph (a) of this section, and

(3) require all broker associations to be registered with their respective contract markets. Such registration shall include the following information:

(i) Name of the broker association;

(ii) Names of all employees, names and status of all partners, shareholders, investors and contract market members;

(iii) Badge symbols of all floor members;

(iv) Account numbers for all accounts of any member, accounts in which any association member or members have an interest, and any proprietary or customer accounts controlled by a member or members of the association;

(v) Identification of all other broker associations with which each member is associated;

(vi) Legal form of the broker association; and

(vii) Individual(s), if any, authorized to represent the association.

Any information contained in the registration statement which becomes deficient or inaccurate shall be promptly updated or corrected with the respective contract market.

§ 156.3 Contract market program for enforcement.

A contract market shall, as part of its responsibilities pursuant to section 5a(8) of the Act and Commission Regulation 1.51, demonstrate effective use of the data gathered in the course of registration to monitor the trading activity of broker associations and their members and to secure compliance with all other contract market bylaws, rules, regulations and resolutions which may pertain to such associations or their members.

Issued in Washington, DC on April 5, 1990, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-8322 Filed 4-10-90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; request for public comment.

SUMMARY: Governor Stevens of the State of Montana notified the Office of Surface Mining Reclamation and Enforcement (OSM) by letter, dated December 27, 1989, that the State had addressed all known abandoned mine areas having coal-related problems. Further, the State has adequate funds available in the Federal abandoned mine land fund for any unforeseen coal problems that might arise during the life of the Abandoned Mine Land Reclamation (AMLR) program. Having satisfied the requirements of the Surface Mining Control and Reclamation Act (SMCRA) of 1977 (Pub. L. 95-87, 30 U.S.C. 1202 *et. seq.*) in regard to abandoned coal-mine reclamation, the State of Montana requests certification to proceed with noncoal-mining reclamation projects as provided for under section 409 of title IV of SMCRA (see also 30 U.S.C. 1239). This notice sets forth the times and locations for the public to submit written comments, to meet and discuss the request with OSM representatives, or to request public meetings.

DATES: OSM will accept written comments on the proposed rule until 4:30 p.m. m.s.t. on May 11, 1990.

Upon request, OSM will hold a public hearing on the proposed rule on May 1, 1990, beginning at 9 a.m. m.s.t. The public hearing will be held at the location shown under "**ADDRESSES**" below.

OSM will accept requests for a public hearing until 4:30 p.m. m.s.t. on April 26, 1990. If no person has contacted OSM by that date to express an interest in testifying in the hearing, it will be canceled. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed to: The Office of Surface Mining Reclamation and Enforcement, Casper Field Office, room 2128, 100 East "B" Street, Casper, Wyoming 82601-1918, or hand-delivered to the same address.

If requested, a public hearing will be held at the Casper Field Office of the Office of Surface Mining Reclamation and Enforcement, room 2128, 100 East "B" Street, Caspser, Wyoming 82601-1918.

Requests for a public hearing should be made by contacting the individual listed under "**FOR FURTHER INFORMATION CONTACT.**"

Copies of the Montana AMLR program, as amended, and the request for certification are available for inspection Monday through Friday, 8:30 a.m. to 4 p.m., excluding holidays, at the following addresses:

Montana Department of State Lands, Department of State Lands, Abandoned Mine Reclamation Bureau, Capitol Station, 1625 Eleventh Avenue, Helena, Montana 59620; telephone: (406) 444-2074.

Office of Surface Mining Reclamation and Enforcement, Casper FIeld Office, Room 2128, 100 East "B" Street, Casper, Wyoming 82601-1918; telephone (307) 261-5776.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, room 2128, 100 East "B" Street, Casper, Wyoming 82601-1918; telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background

Title IV of SMCRA establishes an Abandoned Mine Land Reclamation (AMLR) program for the purposes of

reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water resources eligible for reclamation are those that were mined for coal or affected by coal mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws.

Each State having within its border coal-mined lands eligible for reclamation under Title IV of SMCRA may submit to the Secretary of the Interior, a State Reclamation Plan demonstrating its capability for administering an AMLR program. Upon approval of the State Reclamation Plan by the Secretary, the State may submit to OSM, on an annual basis, an application for funds to be expended in that State on specific reclamation projects that are necessary to implement the approved State Reclamation Plan. Such annual requests are reviewed and approved by OSM in compliance with the requirements of 30 CFR part 886. AMLR funds are to be utilized to address the problems caused by past mining in the following order of priority. First, reclamation efforts are to be directed at correcting or mitigating the problems caused by past coal mining. Certain noncoal-mining-related problems may also be addressed at the same time if they involve direct threats to the public health and safety. Second, following the completion of all coal-related impacts, a State program may then direct its efforts to alleviating the problems caused by all other types of mining. Finally, when all coal- and noncoal-related impacts have been addressed, and if certain other conditions set forth in section 402(g)(2) of SMCRA are satisfied, AMLR funds may be used for construction of specific public facilities in communities impacted by coal mining development.

The Montana Reclamation Plan, as submitted on October 24, 1980, was approved effective November 24, 1980 (45 FR 70445). Since this approval, the State has received OSM approval of 76 coal reclamation projects at a total cost of $34.10 million. In addition, OSM has approved 17 noncoal reclamation projects at a cost of $8.28 million.

II. Discussion of Proposed Action

The Governor of the State of Montana notified OSM by letter on December 27, 1989 (Administrative Record No. MTAML–1) that the State has addressed all known coal-related problems eligible for funding under section 404 of SMCRA.

Once a State has reclaimed all lands adversely impacted by past coal mining, SMCRA provides that a State may utilize its AMLR funds to address eligible problems caused by noncoal mining. OSM is seeking public comments and information concerning any known or suspected unreclaimed lands and water resources in the State that may have been adversely affected by coal-mining practices prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws.

If no past coal-mining problems eligible for funding under section 404 of SMCRA are identified through this process, the Secretary is authorized to allow the State to address noncoal problems, as set forth in 30 CFR part 875. Such noncoal reclamation activities, however, may occur with one condition; that is, if a coal problem occurs or is identified some time in the future, the State must seek immediate approval from OSM to redirect funding to reclaim that problem. In the event of certification by the Secretary, the State has agreed to this condition.

To assist in its analysis of Montana's grant application and the proposed plan for funding future coal-related problems, OSM solicits comments on all relevant economic, environmental, and legal issues involving the reclamation of lands adversely affected by past coal-mining practices and the State's request to fund eligible noncoal projects.

List of Subjects in 30 CFR Part 926

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 14, 1990.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 90–8366 Filed 4–10–90; 8:45 am]

BILLING CODE 4310–05–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1284

RIN 3095–AA47

Temporary Exhibition of Privately-Owned Material in the National Archives Building

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed rulemaking.

SUMMARY: NARA is proposing to publish rules governing the temporary exhibition of privately-owned documents, paintings, and other objects at the National Archives Building that are not part of a NARA-produced exhibit. The policy embodied in these rules is being established because of limited space and other NARA resources for display of items at the National Archives Building.

DATES: Comments must be received by May 11, 1990.

ADDRESSES: Comments should be sent to Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: John Constance or Nancy Allard at 202–501–3214 (FTS 241–3214).

SUPPLEMENTARY INFORMATION: The National Archives Building has very limited space for exhibits. The exhibit space not devoted to the Charters of Freedom (Declaration of Independence, Constitution, and Bill of Rights) is used for long- and short-term exhibits from or about the holdings of the National Archives of the United States. NARA may solicit the loan of material from other Federal agencies or private individuals and organizations for these long- and short-term exhibits.

Occasionally, however, NARA receives unsolicited offers to exhibit at the National Archives Building privately-owned documents, paintings, or other objects that do not relate to planned exhibits. This proposed rule states NARA's policy that documents, paintings, or other objects belonging to private individuals or organizations normally will not be accepted for display at the National Archives Building except as part of a NARA-produced exhibit. If appropriate space is available and NARA exhibit resources permit, NARA may, on a case-by-case basis, accept for temporary exhibit privately-owned documents or other objects that relate to the history of the National Archives as an institution. Normally, loan-related costs (e.g., transportation and insurance) will be borne by the lender.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1284

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend chapter XII of title 36, Code of Federal Regulations, by adding part 1284 to subchapter G to read as follows:

PART 1284—EXHIBITS

Sec.

Authority: 44 U.S.C. 2104(a).

§ 1284.1 Scope of part.

This part sets forth policies and procedures concerning the exhibition of materials at the National Archives Building.

§ 1284.20 Temporary exhibition of privately-owned material.

(a) Documents, paintings, or other objects belonging to private individuals or organizations normally will not be accepted for display at the National Archives Building except as part of a NARA-produced exhibit.

(b) NARA may accept for temporary special exhibit at the National Archives Building privately-owned documents or other objects under the following conditions:

(1) The material to be displayed relates to the institutional history of the National Archives and Records Administration or its predecessor organizations, the National Archives Establishment and the National Archives and Records Service;

(2) Exhibition space is available in the building that the NARA Office of Public Programs and the Document Conservation Branch judge to be appropriate in terms of security, light level, climate control, and available exhibition cases or other necessary fixtures; and

(3) NARA has resources (such as exhibit and security staff) available to produce the special exhibit.

(c) The Assistant Archivist for Public Programs (NE), in conjunction with the NARA General Counsel when appropriate, shall review all offers to display privately-owned material and shall negotiate the terms of exhibition for offers that can be accepted. The lender shall provide evidence of title to and authenticity of the item(s) to be displayed before any loan agreement is executed.

(d) The Assistant Archivist shall inform the offeror of NARA's decision within 60 days.

Dated: March 26, 1990.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 90-8394 Filed 4-10-90; 8:45 am]

BILLING CODE 7515-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AE37

Health Professional Scholarship Program—Associate Degree in Nursing

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its medical regulations governing the Health Professional Scholarship Program to implement new statutory provisions, to clarify the law on the length of eligibility for a stipend, and to facilitate more cost-effective program administration. The proposed amendments will change the "purpose statement" in the regulations, change the definitions of the terms "degree" and "school year," and clarify that VA does not pay program participants a stipend following graduation.

DATES: Comments must be received on or before May 11, 1990. Comments will be available for public inspection until May 21, 1990. These regulatory amendments are proposed to be made effective 30 days after publication of the final rule in the Federal Register.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20402. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 at the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until May 21, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Charlotte Beason, Director, Health Professional Scholarship Program (143B), Office of Academic Affairs, Veterans Health Services and Research Administration, Department of Veterans Affairs (202) 233-3588.

SUPPLEMENTARY INFORMATION: The Veterans Administration Health Care Amendments of 1980, (Pub. L. 96-330) established the Health Professional Scholarship Program to assist in providing an adequate supply of trained physicians and nurses for VA and for the Nation; and if needed by VA, other specified health-care professionals. The Veterans Benefits and Services Act of 1988 (Pub. L. 100-322) authorized VA to provide scholarships to students in a wider array of disciplines. Therefore, VA is amending the purpose statement in the implementing regulations (§ 17.600) to state that scholarships can be provided for training in those additional disciplines.

The Veterans Benefits Amendments Act of 1989 (Pub. L. 101-237) directed that VA, in selecting applicants for scholarships, ensure that an equitable allocation of scholarships be made to students pursuing an associate degree in nursing. VA has not previously awarded scholarships to students pursuing associate degrees. To implement the new provision of law, VA is amending the regulatory definition of "degree" (§ 17.601(h)) to include associate degrees.

VA proposes to amend the regulatory definition of "school year" (§ 17.601(p)). The term is now defined as all or part of the 12 month period from July 1 through June 30. The proposed amendment would redefine "school year," for purposes of making stipend payments, as the period from September 1 through August 31. Because most schools begin the fall term closer to September 1st than to July 1st, the amendment would bring the Scholarship program's school year to a period that more closely resembles reality. Also, VA would begin paying stipends to new students on September 1st, rather than on July 1st, resulting in savings of two months worth of stipends for each student. VA would use the savings to award additional scholarships. VA would, as is now the case, make full payment for tuition and other educational expenses for a full school year, including that part of a Fall term that begins before September 1st.

Finally, VA proposes to amend its regulation on scholarship award procedures (§ 17.606) to clarify that a participant's stipend ends at the close of the month in which degree requirements are met. Under the law, a student who graduates prior to the end of the school year as VA defines it (August 31st under the proposed new definition), may receive a stipend through the month in which degree requirements are met, not through August of that year.

VA has determined that these proposed regulations are not major as defined by Executive Order 12291, Federal Regulation. They will not have an effect on the economy of $100 million and will not result in any major increases in costs or prices for anyone; nor will they have significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

The Secretary hereby certifies that these proposed regulations will not, when promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The amended regulations affect only individuals who apply and are selected for VA Health Professional Scholarship Program awards. These regulations will, therefore, impose no regulatory burdens on small entities.

The Catalog of Federal Domestic Assistance Number for this program is: 64.023.

List of Subjects in 38 CFR Part 17

Health professions, scholarships and fellowships.

Approved: March 21, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 17, Medical, is amended as follows:

PART 17—MEDICAL

1. Section 17.600 is revised to read as follows:

§ 17.600 Purpose.

The purpose of §§ 17.600 through 17.612 is to set forth the requirements for the award of scholarships under the Department of Veterans Affairs Health Professional Scholarship Program to students receiving education or training in a direct or indirect health-care services discipline to assist in providing an adequate supply of such personnel for VA and for the Nation. Disciplines include nursing, physical therapy, occupational therapy, and other specified direct or indirect health-care disciplines if needed by VA.

2. In § 17.601 paragraphs (h) and (p) are revised to read as follows:

§ 17.601 Definitions.

* * * * *

(h) *Degree* means a course of study leading to a doctor of medicine, doctor of osteopathy, doctor of dentistry, doctor of optometry, doctor of podiatry, or an associate degree, baccalaureate degree, or master's degree in a nursing specialty needed by VA; or a baccalaureate or master's degree in another direct or indirect health-care service discipline needed by VA.

* * * * *

(p) *School year* means, for purposes of the stipend payment, all or part of the 12-month period from September 1 through August 31 during which a participant is enrolled in the school as a full-time student.

* * * * *

3. In § 17.606, new paragraph (a)(7) is added to read as follows:

(a) * * *

(7) A participant's eligibility for a stipend ends at the close of the month in which degree requirements are met.

* * * * *

[FR Doc. 90–8282 Filed 4–10–90; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–3755–2]

Designation of Areas for Air Quality Planning Purposes; Ozone Attainment Status Designations; Gregg County, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: Texas submitted a request on September 26, 1989, to redesignate Gregg County from nonattainment to attainment for ozone in accordance with section 107(d)(5) of the CAA. Texas has shown evidence of an implemented EPA approved control strategy, and contingent upon additional ozone air quality data through April 1990 which show no violations of the ozone National Ambient Air Quality Standard (NAAQS), EPA is proposing to redesignate Gregg County from ozone nonattainment to attainment.

DATES: Comments on this designation request must be received on or before May 11, 1990.

ADDRESSES: Copies of the State's designation request, technical support document, and the supporting air quality data are available for public inspection during normal business hours at the following addresses:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AN), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723

If you plan to visit any of these offices, please contact the person named below to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Rebecca Caldwell, (214) 655–7214 or FTS 255–7214.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Clean Air Act (CAA), the Administrator of EPA has promulgated the NAAQS attainment status for all areas within each State. These area designations are subject to revision whenever sufficient air quality data become available to warrant a redesignation and other requirements are met (see 51 FR 26272, July 22, 1986). For areas designated nonattainment for ozone, a revised ozone State Implementation Plan (SIP) was required which satisfies the requirements of section 110(a) and part D of the CAA, and which provides for attainment and maintenance of the ozone NAAQS.

Gregg County Ozone SIP

On April 13, 1979, the TACB submitted to EPA a SIP to accomplish Volatile Organic Compounds (VOC) emission reductions in the rural and urban areas of the State as required by the 1977 CAA. The SIP provided for emission reductions by December 31, 1982, to demonstrate attainment of the ozone standard in Gregg County, which had been identified as a "rural" ozone nonattainment area. The TACB adopted VOC controls, Regulation V, *Control of Air Pollution from Volatile Organic Compounds*, in Gregg County on July 11, 1980, as specified in EPA's Set I and II Control Technique Guidelines. In addition emission reductions were achieved from the Federal Motor Vehicle Control Program (FMVCP) administered by the Federal government. The VOC controls required by TACB Regulation V were effective as of August 22, 1980, and all persons affected by these rules were required to be in compliance as soon as practicable, but not later than December 31, 1982. EPA approved the 1979 SIP for Gregg County on March 25, 1980. More information related to the VOC emission reductions can be found in the Technical Support Document.

The Ozone NAAQS

The NAAQS for ozone is violated when the annual average expected number of daily exceedances of the standard (0.12) parts per million (ppm), 1-hour average) is greater than 1.0. A daily exceedance occurs when the maximum hourly ozone concentration monitored during a given day exceeds 0.124 ppm. (See "Guideline for the Interpretation of Ozone Air Quality Standard", EPA–450/4–79–003, which has been included in the record for this rulemaking action.) The expected number of daily exceedances is calculated from the observed number of exceedances by making the assumption that non-monitored days (due to invalid or incomplete data) have the same fraction of daily exceedances as

observed on monitored days (EPA–450/4–79–003).

Criteria for Ozone Redesignations

Specific criteria for ozone redesignation reviews are given in the following EPA documents and memoranda:

1. Memorandum entitled, "Requirement for VOC RACT Regulation for all Oxidant Nonattainment Areas," from David G. Hawkins, Assistant Administrator for Air, Noise, and Radiation, to Regional Administrators, Regions I–X, August 4, 1978.
2. Letter from Assistant Administrator David G. Hawkins to George Ferreri, Director of the Maryland Bureau of Air Quality and Noise Control, March 7, 1979.
3. "Guideline for the Interpretation of Ozone Air Quality Standards," (EPA–450/4–79–003).
4. Memorandum entitled, "Criteria for Ozone Redesignations under Section 107," from Richard Rhoads to Air and Hazardous Materials Division Directors, December 7, 1979.
5. Memorandum entitled, "Section 107 Designation Policy Summary," from Sheldon Meyers, Director of the Office of Air Quality Planning and Standards, to the Regional Air Directors, April 21, 1983.
6. Memorandum entitled, "Rulemaking Notices on Redesignations," from G.T. Helms, Chief of the Control Programs Operations Branch, to the Air Branch Chiefs, Regions I–X, June 2, 1986.
7. Memorandum entitled, "Ozone Redesignation Policy," from Gerald A. Emison, Director, Office of Air Quality Planning and Standards to Regional Air Directors, April 6, 1987, which includes a letter from David Kee, Director, Region V, Air and Radiation Division, to Robert P. Miller, Chief, Air Quality Division, Michigan Department of Natural Resources, March 16, 1987.
8. "Policy for Ozone Redesignation—Summary," author: G.T. Helms, Chief, Control Programs Operations Branch (undated).

Proposed Designation

On April 14, 1989, the Texas Air Control Board adopted a resolution recommending that Gregg County be reclassified as an attainment area for ozone. The TACB submitted the resolution and supporting documentation to EPA on September 26, 1989, and additional requested information on December 7, 1989.

In order to redesignate an ozone nonattainment area, EPA policy requires that the most recent three years of ozone data show an expected exceedance calculation of less than or equal to 1.0 averaged over a three-year period. Texas has submitted ambient air quality data collected at the Gregg County monitoring site from 1977 to 1988 except for 1986 and the early part of 1987.

The most recent three years of data needed to designate Gregg County to attainment would include 1987, 1988, and 1989. Texas did not start monitoring in 1987 until May 1, 1987; therefore, in order to have a complete three years of data, Texas must provide ozone air quality monitoring data through April 1990.

The expected exceedance calculation is zero in 1987, 1988, and 1989 since there were no ozone exceedances. As long as the expected exceedance calculation through April 1990 remains less than 1.0 averaged over the May 1, 1987 through April 30, 1990 time period, Gregg County would have the appropriate monitoring data to redesignate the county to attainment.

Proposed Action

The State's request to redesignate Gregg County from nonattainment to attainment status for ozone provides evidence that Gregg County has an approved and implemented SIP, verifies that the major VOC sources are in compliance in the county, and that attainment has been achieved through real enforceable emission reductions and not as a result of economic downturn in the economy.

Therefore, EPA is proposing to redesignate Gregg County from nonattainment to attainment for the ozone NAAQS as long as ozone monitoring data through April 1990 show the expected exceedance calculation remains less than 1.0 averaged over the three-year period from May 1, 1987 to April 30, 1990.

Today's action is also contingent upon the State and/or county maintaining an adequate ozone ambient air quality monitoring network and continuing full implementation of their nonattainment plan.

All interested parties are invited to submit written comments on EPA's proposed approval of the designation request and the ambient data. Written comments received by the date specified above all be considered in determining whether EPA will approve the designation. After review of all the comments submitted and the additional required ozone monitoring data, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the designation request.

Under Executive Order 12291, this action is not "Major". It does not need to be submitted to the Office of Management and Budget (OMB) for review.

Under 5 U.S.C. section 605(b), I certify that proposing to approve this designation request for Gregg County, Texas will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements on anyone.

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: March 5, 1990.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 90–8396 Filed 4–10–90; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 261

[SW-FRL-3754-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by the State of Arkansas Department of Pollution Control and Ecology (ADPC&E), to conditionally exclude certain solid wastes generated at the Vertac Superfund site near Jacksonville, Arkansas from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of an organic leachate model and a fate and transport model and their application in establishing the levels of concern the petitioner must achieve in the petitioned wastes, when generated. These models have been used in evaluating the petition to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned wastes, once they are generated and disposed.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the organic

leachate model and fate and transport model used to establish levels of concern for this petition. Comments will be accepted until May 29, 1990. Comments postmarked after the close of the comment period will be stamped "late.".

Any person may request a hearing on this proposed decision and/or the models used in the petition evaluation by filing a request with Joseph Carra, whose address appears below, by April 26, 1990. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-205), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-90-ADEP-FFFFF."

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m. in Room M2427, Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Dr. Robert Kayser, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4788.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes are listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner must also demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes are also considered hazardous wastes. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standards for "delisting" a treatment residue or a mixture are the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

This petition requests a delisting for three listed hazardous wastes. In making the initial delisting determination, the Agency evaluated the petitioned wastes against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). Based on this review, the Agency agrees with the petitioner that the wastes are non-hazardous with respect to the original listing criteria. If the Agency had found, based on this review that the wastes remained hazardous based on the factors for which the wastes were originally listed, EPA would have proposed to deny the petition. EPA then evaluated the wastes with respect to other factors or criteria to address whether there was a reasonable basis to believe that such additional factors could cause the wastes to be hazardous. The Agency considered whether the wastes were acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the wastes, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the wastes, plausible and specific types of management of the petitioned wastes, the quantities of wastes generated, waste variability, and the efficiency of the proposed waste treatment.

For this delisting determination, the Agency used such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use an organic leachate model and a fate and transport model to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned wastes after disposal.

EPA believes that this fate and transport model represents a reasonable worst-case waste disposal scenario for these petitioned wastes, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site

landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that, because ADPC&E is seeking an upfront delisting (i.e., an exclusion based on data from wastes generated from a laboratory-scale treatment process), ground-water monitoring data collecting from the area where the petitioner plans to dispose of the wastes is not necessary. Because the petitioned waste are not currently generated or disposed of, ground-water monitoring data would not characterize the effects of the petitioned wastes on the underlying aquifer at the disposal site, and, thus, would serve no purpose.

The State of Arkansas petitioned the Agency for an upfront exclusion (for wastes that have not yet been generated) based on a small-scale waste treatment process (*i.e.*, a scaled-down incineration system), untreated waste characteristics, and process descriptions. The Agency is proposing that verification testing requirements (*i.e.*, required analytical testing of representative samples obtained from the full-scale incineration system verifying that the treatment system is on-line and operating as described in the petition) be made conditions of the exclusion. These conditions, if the exclusion is granted, will be implemented to show that, once the incinerator is on-line, it will generate residues that meet the Agency's verification testing limitations (*i.e.*, the maximum allowable levels of the hazardous constituents of concern present in each waste, below which, the waste would not be considered hazardous). Additional testing requirements must be met on a periodic basis following the verification testing demonstration to ensure that the wastes continue to meet the delisting criteria throughout the treatment of the Vertac wastes.

From the evaluation of ADPC&E's upfront delisting petition, a list of constituents were developed for the verification testing. Tentative maximum allowable concentrations for these constituents for each of the petitioned wastes then were derived by back-calculating from the delisting health-based levels through the use of the proposed fate and transport model for a landfill management scenario. These levels (*i.e.*, delisting levels) are proposed conditions of the delisting.

The Agency encourages the use of upfront delisting petitions because they have the advantage of allowing the applicant to know what treatment levels for constituents should be sufficient to render specific wastes non-hazardous, before investing in new or modified waste treatment systems; therefore, upfront delisting will allow new facilities to receive exclusions prior to generating wastes which, without upfront exclusions, would unnecessarily have been considered hazardous. Upfront delistings for existing facilities can be processed concurrently during construction or permitting activities. Therefore, new or modified treatment systems should be capable of producing wastes that are considered non-hazardous sooner than otherwise would be possible. At the same time, conditional batch testing requirements to submit data verifying that the delisting levels are achieved by the fully operational manufacturing/treatment systems will maintain the integrity of the delisting program and will ensure that only non-hazardous wastes are removed from subtitle C control.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

1. Petition for Exclusion

The State of Arkansas Department of Pollution Control and Ecology (ADPC&E) petitioned the Agency to exclude from identification as hazardous waste by-products generated during the operation of a proposed incinerator system on wastes at the Vertac site: kiln and cyclone ash, and calcium chloride salts and excess lime. These wastes, when generated, will be listed as EPA Hazardous Waste Nos. F020—"Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetracholorophenol, or of the intermediates used to produce their pesticide derivatives (this listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol)"; and F023—"Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- and tetrachlorophenols (this listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol)". The listed constituents of concern are tetra- and pentachlorodibenzo-p-dioxins; tetra- and pentachlorodibenzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts (see 40 CFR 261, appendix VII). ADPC&E believes that the proposed treatment process will significantly, if not completely, reduce the constituents of concern (and any other hazardous constituents) to non-hazardous levels.

Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 USC 6921(f), and 40 CFR 260.22(d)(2)-(4). Today's proposal to grant this petition for an upfront delisting is the result of the Agency's evaluation of ADPC&E's petition.

2. Background

The Vertac site is located within the city limits of Jacksonville, Arkansas. The 63-acre Vertac facility was used for the production of agricultural herbicides from 1948 to 1986. The Reason-Hill Company was the original site owner/operator. Hercules bought the facility in 1963. Transvaal (currently known as Vertac) leased the plant from 1971 to 1976, bought the plant in 1976, and operated it until January of 1987. 2,4,5-Trichlorophenoxy acetic acid (2,4,5-T) and 2,4-dichlorophenoxy acetic acid (2,4-D) were the primary products manufactured by all the owners/operators of the facility.

During the 1978 National Dioxin Survey, dioxin levels as high as 40 ppm were found in the 2,4,5-T and 2,4-D production wastes present at the site. As

a result, EPA and ADPC&E investigated this site and placed it on the National Priority List in 1982. Following a Consent Decree among EPA, ADPC&E, Vertac, and Hercules, a remedial action was implemented in 1986. The remedial action did not, however, provide for waste stored in drums on-site, process equipment, contaminated surface soils, buildings or ground water.

In 1985, a series of incineration experiments were performed using wastes from the Vertac site at the EPA Combustion Research Facility (CRF) in Jefferson, Arkansas. The primary objective of the tests was to evaluate the treatability of the waste generated from the 2,4,5-T manufacturing process. The results of the tests indicated that incineration is capable of achieving 99.9999 percent destruction removal efficiency for 2,3,7,8-tetracholorodibenzo-p-dioxin (TCDD) as required by 40 CFR 264.343, making the incineration of the waste a viable treatment alternative.

In 1987 an immediate removal action was initiated to mitigate the hazards posed by the deterioration of the drums. As an interim measure, the drums were overpacked and spills containerized. These interim measures were taken to minimize hazards until a permanent remedy is selected. ADPC&E is using a trust fund set up by Vertac to incinerate the wastes, and ADPC&E has awarded the contract for incineration to MRK industries.

In support of this petition, ADPC&E submitted: (1) A detailed description of the manufacturing processes which generated the drummed wastes and the proposed incineration process; (2) a list of all the raw materials used in the manufacturing processes; (3) a list of materials to be incinerated; (4) the generic composition of the wastes to be incinerated based upon data developed by Vertac, and analyses of the 2,4,5-T waste for the demonstration test burn at CRF; (5) a list of 40 CFR part 261, appendix VIII constituents expected to be present in the wastes to be incinerated; (6) the quantity of by-products expected to be generated by the incineration process; (7) a theoretical list of 40 CFR part 261, appendix VIII constituents for analysis in the incineration by-products (the petitioned wastes); and (8) the proposed sampling plan for testing the incineration by-products. Once ADPC&E's full-scale treatment system is on-line, EPA proposes that ADPC&E be required to perform leachate analyses for the EP toxic metals, nickel, and cyanide, and compositional analyses for a selected list of organics, including dioxins and furans to verify that the incinerator, once on-line, meet the verification testing limitations specified in the exclusion (see section 7—*Verification Testing Conditions*).

3. Materials To Be Incinerated

ADPC&E submitted descriptions of the materials proposed to be incinerated under the exclusion if the petition is granted. This information included catalogs of the materials, process flow diagrams and process chemistry information, as well as limited analytical data which characterized the hazardous constituents likely to be present in the untreated wastes. The materials to be incinerated are summarized in Table 1. The primary wastes of concern are the 3,000 drums of 2,4,5-T waste and 25,700 drums of 2,4-D wastes. The empty drums, protective clothing, filter paper, floor sweepings, and other materials are considered to be contaminated with the same constituents as the 2,4-D and 2,4,5-T wastes.

To characterize the hazardous constituents of the materials listed in Table 1, ADPC&E submitted three types of compositional data:

- Date derived from descriptions of the manufacturing processes, raw materials lists, and process chemistry,
- Waste characterization data developed by Vertac, and
- Analyses performed in support of the CRF trial burn.

ADPC&E requested an "upfront" delisting and provided analytical data from actual treatment residues (*e.g.* the CRF trial burn data for the 2,4,5-T waste) in support of its petition.

TABLE 1.—CATALOG OF 2,4,5-T AND 2,4-D WASTES AND CONTAMINATED MATERIALS TO BE INCINERATED

• 25,700 drums of 2,4-D wastes.
• 3,000 drums of 2,4,5-T wastes, including 600 and 2,400 drums of methanol and toluene waste, respectively.
• 107 empty 55-gallon steel drums.
• 974 empty 55-gallon polyethylene drums.
• 446 empty 85-gallon steel drums.
• 8,850 empty 85-gallon polyethylene drums.
• Protective clothing, including tyvek suits, gloves, and tape.
• Drum rinsate water.
• Liquid blowdown from the incinerator's wet scrubber.
• Decontamination liquids.
• Spent granular activated carbon.

TABLE 1.—CATALOG OF 2,4,5-T AND 2,4-D WASTES AND CONTAMINATED MATERIALS TO BE INCINERATED—Continued

• 7,728 cubic feet of crushed drums and trash from the cleanup of the 2,4,5-T still bottom storage field.
• 66 empty yellow drums and 47 empty black drums that had contained 2,4,5-T.
• 700 empty drums previously used to transfer/contain 2,4,5-T.
• 347 drums containing filter paper contaminated by 2,4-D.
• 45 drums of floor sweepings from 2,4-D process areas.
• 13 drums of contaminated soil excavated from the 2,4-D still bottom storage area.
• 35 drums of chlorobenzene contaminated insulation and trash.
• 24 boxes of trash, each box containing 7 empty methyl chloropropionic acid sacks.
• 645 cubic feet of flattened boxes that have been used to transfer and contain 2,4-D.

The 3,000 drums of 2,4,5-T waste were generated in the 2,4,5-T raw materials formulation process and consist of approximately 600 drums of methanol waste and 2,400 drums of toluene waste. In this formulation process, 1,2,4,5-tetrachlorobenzene was reacted with sodium hydroxide and methanol to form 2,4,5-trichlorophenol, which was subsequently washed with water (generating the methanol waste) and distilled with toluene (generating the toluene waste). Table 2 provides ADPC&E's estimate of the composition of these wastes.

TABLE 2.—Estimated 2,4,5-T WASTE COMPOSITIONS

Constituents	Concentrations
Methanol Waste	
2,4,5-Trichloroanisole	unknown
Dichloromethoxy benzenes.	unknown
Tetrachlorodibenzo-p-dioxin.	unknown
Toluene Waste	
2,4,5-Trichloroanisole	55%
Dichloromethoxy benzenes.	30%
2,4,5-Trichlorophenol (sodium salt).	5%
Toluene	5%
Dichloromethoxy phenols	2%
Water	2%
Tetrachlorodibenzo-p-dioxin.	5–80 ppm, (18 ppm average)

Additional analyses of the toluene waste were conducted by CRF in support of the demonstration trial burn. Table 3 summarizes the concentrations of all priority pollutants detected in the wastes.

TABLE 3.—CONCENTRATIONS OF DETECTED PRIORITY POLLUTANTS IN THE 2,4,5-T TOLUENE WASTE

Constituents	Concentrations (ppm)
1,2-Dichlorobenzene	2,690
1,2-Dichlorophenol	159
Lead	4
Methylene chloride	277
Toluene	159,000
1,2,4-Trichlorobenzene	3,410

The 25,700 drums of 2,4-waste were generated in a waste recovery process. While ADPC&E does not believe that dioxins and furans were generated during 2,4-D manufacture, Vertac used equipment previously used for 2,4,5-T manufacture. This equipment was, therefore, contaminated with chlorinated dibenzo-o-dioxins (CDDs) and chlorinated dibenzofurans (CDFs), resulting in the classification of the 2,4-D wastes as EPA Hazardous Waste No. F023. Table 4 presents ADPC&E's estimate of the composition of these wastes.

TABLE 4.—ESTIMATED 2,4-D WASTE COMPOSITION

Constituents	Concentrations (percent)
2,4-D	40
2,6-D	40
2,4,5-T	10
2,4-Dichlorophenol	4
2,6-Dichlorophenol	2
Solvents (toluene, heptane)	2

ADPC&E also submitted analytical data characterizing the dioxin and furan content in four samples of the kiln ash generated by the CRF trial burn. These data, summarized in Table 5, show that none of the dioxin or furan homologs of concern were detectable in the CRF kiln ash, based on high resolution gas chromatography/high resolution mass spectrometry (HRGC/HRMS) analyses.

TABLE 5.—LEVELS OF DIOXINS AND FURANS IN CRF KILN ASH SAMPLES (PPT)

Constituents	Sample 1	Sample 2	Sample 3	Sample 4
2,3,7,8-TCDD	[1](13)	(10)	(5.6)	(28)
Tetra-CDDS	(13)	(10)	(5.6)	(28)
Penta-CDDs	(28)	(6.5)	(4.2)	(16)
Hexa-CDDs	(7.4)	(4.5)	(5.0)	(37)
Hepta-CDDs	(14)	(6.3)	(3.4)	(8.4)
2,3,7,8-TCDF	(7.0)	(16)	(7.1)	(10)
Tetra-CDFs	(7.0)	(16)	(7.1)	(10)
Penta-CDFs	(11)	(2.7)	(1.7)	(6.4)
Hexa-CDFs	(4.6)	(2.8)	(3.1)	(7.4)
Hepta-CDFs	(12)	(6.2)	(3.4)	(8.4)

[1] Numbers in parentheses denote analyte not detected to the detection limit in parentheses.

4. Proposed Incineration System

The proposed incineration process is composed of a rotary kiln, ash removal facility, cyclone separator, secondary combustion chamber, and dry and wet scrubbing system. Each of these systems is described briefly below, and in more detail in the public docket accompanying this notice.

Drums containing the wastes will be opened, emptied into a collection tank for transfer to the incinerator, and triple rinsed as required by 40 CFR 261.7. After triple rinsing, the empty drums in usable condition will be used for storage of incineration byproducts. The drum rinsate water will be transferred to the kiln cooling water tank and will be used to cool the kiln. All of the drum rinsate water will be evaporated in the kiln.

A rotary shredder will be used to reduce drums and other large objects to smaller pieces approximately 1.5 inches by 3.0 inches. The shredder material will drop to a conveyor and will be transferred to the incinerator.

The Vertac site wastes will be fed to the rotary kiln incinerator at a rate of approximately 7,000 pounds per hour. The organic portion of the wastes will be vaporized and partially oxidized in the rotary kiln at a temperature of approximately 1,800 °F. Natural gas will be used as fuel for the rotary kiln. Incombustible ash from the rotary kiln will be discharged to an ash bin for collection and storage in drums. (The ash will be held in drums until it has been analyzed and shown to meet the delisting criteria, as described further in section 7.) The gas from the rotary kiln will be discharged to an 8-foot diameter cyclone separator that will partially remove the remaining particulates in the gas. Particulates removed by the cyclone separator will also be collected in the ash bin and stored in drums.

After passing through the cyclone separator, the gas will be discharged to an afterburner or secondary combustion chamber where the remaining organic contaminants will be oxidized at a temperature of approximately 2,200° F. The hot gas from the afterburner will be discharged to a sprayer/dryer absorber chamber where a water/lime slurry will be used to cool the gas and neutralize the hydrochloric acid (HCl) in the gas. Approximately 50 gallons per minute of water and 3,500 pounds per hour of lime will be added to the absorber chamber. The water will be evaporated and the combustion gases cooled to 350 to 400° F. The lime will mix with the combustion gases and a dry-phase neutralization will occur for a large portion of the HCl. The dry calcium chloride salt that is formed, the excess lime, and the combustion gases will then pass into a baghouse particulate scrubber where the lime, salt, and other particulates will be removed. It is anticipated that approximately 0.75 pounds of calcium chloride salt will be formed for each pound of waste fed to the rotary kiln incinerator. The salt residues from the absorber chamber and the baghouse will be combined, collected and placed in drums for storage until they have been analyzed to determine whether they meet the delisting criteria described further in section 7.

Combustion gases from the baghouse will then enter a wet scrubber where they will be quenched and scrubbed of additional HCl by water and recirculated brine sprays. The absorber

chamber, baghouse, and wet scrubber are designed to achieve a 95 percent particulate removal efficiency and an acid gas removal efficiency of 99 percent for HCl.

The liquid blowdown from the wet scrubber will be approximately 3 gallons per minute. This blowdown will be used to provide a liquid seal for the drag chain (which moves the incinerated material through the kiln) and will be evaporated. No liquid wastes therefore will be generated which will require disposal. Residual ash and calcium chloride salts in the blowdown will be collected and placed in drums until they can be tested. The exhaust gas will be drawn from the scrubbing system by an induced draft fan and discharged through a fiberglass-reinforced vinylester exhaust stack that is approximately 40 feet high.

The performance of the incineration system will be maintained through instrumentation and automatic safety shutdown controls. Temperature controlled solenoid valves are used to shut down the incinerator burners in the event of an emergency. The incinerator operators can override the computer at any time.

Table 6 lists the expected quantity of by-products from the incineration process.

TABLE 6.—EXPECTED BY-PRODUCT GENERATION QUANTITIES

By-products	1 Batch (daily) (55-gallon drums)	Total (55-gallon drums)
Kiln ash	40	4,970
Cyclone ash	3	285
Residual Calcium Chloride Salts	233	23,675

As stated previously, the by-products identified in Table 6 will be stored on-site until a determination is made as to whether they meet the delisting criteria set forth in section 7. This determination will be made based upon actual waste characterization data.

5. Agency Evaluation

ADPC&E developed a theoretical list of 40 CFR part 261, appendix VIII constituents for analysis in the petitioned by-products. ADPC&E used process chemistry information to predict which chemical elements were present in the manufacturing processes. Based upon the process and analytical information they concluded that only carbon (C), oxygen (O), hydrogen (H), chlorine (Cl), and sodium (Na) were used in the 2,4,5-T and 2,4-D manufacturing processes. Subsequently, those compounds from Appendix VIII which are made up of elements other than C, O, H, Cl, and Na were excluded from further consideration. Because of their chemical structure, those constituents in appendix VIII which would not be present in the petitioned by-products, were also excluded for consideration of analysis. (However, ADPC&E proposed to include the EP toxic metals and nickel on the list of analytes. For reasons discussed in detail elsewhere in this notice, the Agency agrees that these constituents are appropriate analytes.) ADPC&E also proposed that polynuclear aromatic hydrocarbons (PAH) be excluded on this basis because they will not be present in the incineration process due to the use of natural gas as fuel. ADPC&E further proposed to exclude from consideration those constituents for which there are no EPA approved test methods. ADPC&E's evaluation is presented in further detail in the petition which is available in the RCRA public docket for this proposal.

With the exception of ADPC&E's PAH assumption, the Agency considers ADPC&E approach to be a reasonable starting point for developing an appropriate list of constituents for analysis of the incineration residues. Table 7 presents the appendix VIII constituents to be analyzed in the petitioned by-products. EPA chose the constituents in Table 7 as appropriate for analysis based on the characterization of constituents likely to be present in the untreated wastes as well as the possible formation of products of incomplete combustion. Possible products of incomplete combustion include not only the PAHs, but also a variety of other organics that may be formed during incineration or that are difficult to incinerate. A key concern for the Vertac waste is the possible presence of chlorinated dioxins or furans in the incineration residues due either to incomplete destruction of the dioxins already present in the untreated waste, or the possible formation of these substances during the incineration of wastes containing high levels of known dioxin precursors (e.g. trichlorophenols). Therefore, Table 7 includes the chlorinated dioxins and furans as critical analytes. EPA believes that if destruction of the dioxins is successful, it is highly likely that the destruction of other (less toxic) organics that are more susceptible to incineration will also be complete.

To further ensure that complete combustion occurs, EPA include on the list of analytes in Table 7 those organics judged to be almost as difficult as (or more difficult than) the dioxins to incinerate. These organics were identified from the thermal stability index developed by EPA to identify principal organic hazards constituents (POHCs) for use in establishing incinerator permit conditions ("Handbook—Guidance on Setting Permit Conditions and Reporting Trial Burn Results", Appendix D, EPA publication 625/6–89/019, January 1989. See the public docket for today's proposal for a copy of appendix D). This stability index ranks the Appendix VIII organics into seven thermal stability classes, and places 2,3,7,8-tetrachlorodibenzo-p-dioxin in the most stable class, *i.e.*, the most difficult to destroy (class 1). Other Appendix VIII organics of concern from the two top stability classes (classes 1 and 2) were also included as analytes in Table 7 as possible products of incomplete combustion.

TABLE 7.—POSSIBLE HAZARDOUS CONSTITUENTS FOR VERIFICATION MONITORING

Inorganics (Leachable):
- Arsenic
- Barium
- Cadmium
- Chromium
- Lead
- Mercury
- Nickel
- Selenium
- Silver

Dioxins and Furans:
- tetra-, penta-, hexa-, and heptachlorodibenzo-p-dioxins
- tetra-, penta-, hexa-, and heptachlorodibenzofurans

Appendix VIII Constituents Likely Present in Unrelated Wastes:
- Chlorobenzene
- o-Chlorophenol
- 2,4-D
- 1,2-Dichlorobenzene
- Dichloromethane
- 2,4-Dichlorophenol
- 2,6-Dichlorophenol
- Lead
- Phenol
- 1,2,4,5-Tetrachlorobenzene
- Tetrachlorodibenzo-p-dioxin
- 2,3,4,6-Tetrachlorophenol
- Toluene
- 1,2,4-Trichlorobenzene
- 2,4,5-Trichlorophenol
- 2,4,6-Trichlorophenol
- 2,4,5-T

Other Possible Products of Incomplete Combustion That May Be Present:

Benzene
Benz(a) anthracene
Benzo(a) pyrene
Benzo(b) fluoranthene
Chrysene
DDE
Dibenz (a,h) anthracene
1,3-Dichlorobenzene
1,4-Dichlorobenzene
1,1-Dichloroethylene
trans-1,2-Dichloroethylene
Fluoranthene

TABLE 7.—POSSIBLE HAZARDOUS CONSTITUENTS FOR VERIFICATION MONITORING—Continued

Hexachlorobenzene
Indeno (1,2,3-cd) pyrene
Methyl chloride
Methyl methacrylate
Naphalene
Polychlorinated biphenyls
Pentachlorobenzene
Tetrachloroethylene
Trichloroethylene
Vinyl chloride

Finally, the Agency also proposes to require the analysis of leachate from the waste for the EP toxic metals, nickel, and cyanide. While waste characterization data suggest that significant levels of metals should not be present in the untreated wastes, EPA believes that analysis of incineration residues for the metals should be required for several reasons. First, unlike organics, metals if present are not destroyed during incineration and should become more concentrated in the incineration residues. In addition, the wastes to be incinerated include some metal drum and packaging materials. Furthermore, the leachability of any metals may change (i.e. increase) in the treated matrix, due to possible oxidation in the kiln.

EPA does not propose that the incineration residues be tested for any waste characteristics, beyond the testing required for the EP toxic metals. The Agency believes that the wastes produced from incineration are not expected to exhibit the characteristics of ignitability, corrosivity, or reactivity as defined in 40 CFR 261.21, 261.22, and 261.23, respectively.

The following sampling strategy will be used to ensure that representative samples will be obtained from the petitioned by-products.

Kiln ash and cyclone ash will be placed in drums for storage. One grab sample will be taken from each drum of kiln ash and cyclone ash generated. All of the grab samples of ash collected will be composited to form one sample that is representative of the ash generated during the sampling period. Sampling will continue throughout the duration of the waste incineration. The sampling period will initially be on a daily basis, and later will be on a weekly basis (see section 7).

The calcium chloride salt residue is produced when a lime-slurry spray injected into the absorber chamber to cool the gas from the afterburner and neutralize HC1 in the gas. The salt residue produced will be placed in drums for storage. One grab sample will be taken from each drum of the salt residues generated. All the grab samples of the salt residues collected during a sampling period will be composited to form one sample representative of the salt residues generated during that period. Sampling will continue throughout the waste incineration (initially on a daily basis, and later on a weekly basis, see section 7).

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to grant ADPC&E's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has initiated a spot-sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may select this facility in the future for spot-check sampling.

The Agency considered the appropriateness of alternative disposal scenarios for incineration residues and decided that disposal in a landfill is the most reasonable, worst-case scenario for these wastes. Using the vertical and horizontal spread (VHS) landfill model, which predicts the potential for ground-water contamination from wastes that are landfilled, the Agency derived maximum allowable waste concentrations for the metals and cyanide in the incineration by-products from the delisting health-based levels for these constituents. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. The maximum allowable waste concentrations for the organic constituents of concern were derived from the Organic Leachate Model (OLM) (see 51 FR 41084, November 13, 1986) and the VHS model. The OLM is used to predict leachable concentrations of organic constituents in a waste. The maximum allowable organic concentrations were back-calculated through the OLM from the predicted VHS model leachate concentrations.

This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters to predict reasonable worse-case contaminant levels in ground water at a hypothetical receptor well or compliance point (*i.e.*, the model estimates the dilution of a toxicant within the aquifer for a specific volume of waste). The Agency requests comments on the use of the OLM and VHS model as applied to the evaluation of ADPC&E's waste.

The Agency concluded, after reviewing ADPC&E's description of Vertac's processes and raw materials list, that no other hazardous constituents of concern were being used, and that no other constituents of concern are likely to be present or formed as reaction products or by-products of the wastes to be incinerated.

6. Conclusion

The Agency believes that a properly designed and operated incineration system will significantly reduce the volume and toxicity of acutely hazardous wastes presently stored on the Vertac site. The Agency believes that daily sampling of the petitioned by-products initially generated will reflect the day-to-day variations in the treatment process and any variations in the composition of the untreated wastes. Therefore, the Agency is proposing to require that the petitioner obtain and analyze twenty-four hour composite samples of each of the ash and salt residues during the first four weeks of operation to ensure that the incinerator effectively handles the potential variation in constituent concentrations (see section 7—*Verification Testing Conditions*). After the completion of the first month of operation, the petitioner will be required to test weekly composites of the incineration by-products to ensure continued effective treatment.

Therefore, the Agency is proposing that the incineration by-products generated using the treatment process described in ADPC&E's petition be considered non-hazardous (provided ADPC&E meets both initial performance verification testing and subsequent testing requirements) as the by-products should not present a hazard to either human health or the environment. The Agency proposes to grant a conditional upfront exclusion to the Arkansas Department of Pollution Control and Ecology for the incineration by-products generated by its incineration process described in its petition as EPA Hazardous Waste Nos. F020 and F023. If the proposed rule becomes effective and provided the conditions of the exclusion are met, the petitioned incinerator by-products will no longer be subject to 40

CFR parts 262 through 268 and the permitting standards of 40 CFR part 270.

7. Verification Testing Conditions

As stated earlier, the proposed exclusion contains verification testing requirements. If a final exclusion is granted, the petitioner will be required both to verify that the treatment system is on-line and operating as described in the petition, and to show that once on-line, the treatment system can continue to meet the Agency's verification testing limitations (*i.e.*, "delisting levels"). These proposed conditions are specific to the upfront exclusion as petitioned by ADPC&E.

This proposed exclusion is conditioned upon the following:

(1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW–846 methodologies.

(A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, representative grab samples must be taken from each drum of kiln ash and cyclone ash generated from each 24 hours of operation, and the grab samples composited to form one composite sample of ash for each 24-hour period. Representative grab samples must also be taken from each drum of calcium chloride salts generated from each 24 hours of operation and composited to form one composite sample of calcium chloride salts for each 24-hour period. Prior to disposal of the residues from each 24-hour sampling period, the daily composites must be analyzed for all of the constituents listed in Condition (3). ADPC&E must report the analytical test data, including quality control information, obtained during this initial period no later than 90 days after the start of the operation.

The Agency has determined, through its review of similar petitions, that approximately four weeks are required for a facility to train operators and to collect sufficient data to verify that a full-scale incineration process is operating correctly. The proposed initial testing condition, if promulgated, will require ADPC&E to collect daily composite samples during the first four weeks of operation of the full-scale treatment system. The Agency proposed this initial testing condition both to gather data obtained from the full-scale treatment system and to ensure that the system is closely monitored during the start-up period.

The Agency is concerned that the concentration of the constituents in the incineration by-products may vary somewhat over time due to possible variations in the waste feed. As a result, the Agency is proposing a subsequent testing condition to ensure that the incineration process effectively handles any variation in constituent concentrations. The Agency believes that the potential variations in waste feed composition justify the requirement for continued testing of weekly composite samples of the incineration residues. Therefore, the Agency is proposing to require the petitioner to analyze weekly composites of the incineration residues as follows:

(B) *Subsequent Testing:* Representative grab samples of each drum of kiln and cyclone ash generated from each week of operation must be composited to form one composite sample of ash for each weekly period. Representative grab samples of each drum of calcium chloride salts generated from each week of operation must also be composited to form one composite sample of calcium chloride salts for each weekly period. Prior to disposal of the residues from each weekly sampling period, the weekly composites must be analyzed for all of the constituents listed in Condition (3). The analytical data, including quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA.

The Agency believes that collecting composite samples on a weekly basis will be sufficient to ensure that the incineration process can accommodate any potential changes in constituent concentrations due to variations in the materials being incinerated.

Future upfront delisting proposals and decisions issued by the Agency may include different testing and reporting requirements based on an evaluation of the uniformity of the process and of the waste, of the waste volume (including whether there is a fixed volume of waste or an infinite source), and of other factors normally considered in the petition review process.

The Agency requests comments on alternate testing requirements for the post-verification testing requirements (Condition (1)(B)). Specifically, the Agency requests comments on whether ADPC&E should be permitted to reduce the scope of the analytical requirements under this condition after four consecutive weekly composite samples show that constituents listed in Condition (3) have not been detected in the incineration by-products. For example, under this alternative, if ADPC&E demonstrates that the pesticides and derivatives listed in Condition (3) (2,4–5, DDE) are not present in the ashes or calcium chloride salts in four consecutive sets of weekly composite samples, ADPC&E would not be required to analyze subsequent samples for those constituents. This approach would also allow ADPC&E to narrow the number of required analytical methods if they can demonstrate that consituents requiring specialized methods (*e.g.*, distilled water leaching for cyanide, Method 8290 for dioxins and furans) are not present in four consecutive weekly composite samples. Comments on this alternative should also address whether this alternative, if adopted, should be limited to those constituents found in Condition (3) that are not listed in 40 CFR part 261, appendix VII for F020 and F023, whether all testing (except perhaps leachable metals) could be eliminated, and whether operating conditions exist under which testing should resume (*e.g.*, upsets).

(2) *Waste Holding:* The incineration residues that are generated must be stored as hazardous until the initial verification analyses or subsequent analyses are completed.

If the composite incineration residue samples (from either Condition (1)(A) or Condition (1)(B) do not exceed any of the delisting levels set in Condition (3), the incineration residues corresponding to these samples may be managed and disposed of in accordance with all applicable solid waste regulations. If any composite incineration residue sample exceedes any of the delisting levels set in Condition (3), the incineration residues generated during the time period corresponding to this sample must be retreated until they meet these levels (analyses must be repeated) or managed and disposed of in accordance with subtitle C of RCRA.

Incineration residues which are generated but for which anaylsis is not complete or valid must be managed and disposed of in accordance with subtitle C of RCRA, until valid analyses demonstrate that the wastes meet the delisting levels.

The purpose of this condition is to ensure that any incineration by-products which contain hazardous levels of EP toxic metals, nickel, cyanide, or specific organic constituents will be managed and disposed of in accordance with subtitle C of RCRA. Holding the incineration by-products until characterization is complete will protect against improper handling of hazardous material.

Condition (3), as listed below, provides the list of constituents for which ADPC&E must test the petitioned incineration by-products, as well as the levels at which (or below which) the wastes will be considered non-hazardous. The constituents in Condition (3) do not reflect all of the constituents in Table 7. The results of the OLM and VHS model analysis (which are available in the RCRA public docket to this notice) indicate that a number of constituents in Table 7 do not present a risk from a ground-water exposure scenario unless present in concentrations greater than 1,000 ppm in

the incineration by-products. The constituents not in Condition (3) (and their corresponding delisting levels) are: 1,2-dichlorobenzene (5,000 ppm), 1,3-dicholorobenzene (48,000 ppm), fluoranthene (26,000 ppm), methyl chloride (8,300 ppm), methyl methacrylate (130,000 ppm), naphthalene (570,000 ppm), pentachlorobenzene (2,200 ppm), phenol (20,000 ppm), 2,3,4,6-tetrachlorophenol (3,000 ppm), toluene (12,000 ppm), 1,2,4-trichlorobenzene (12,000 ppm), 2,4,5-trichlorophenol (21,000 ppm), and 2,4,5-T (100%). The Agency believes that it is highly unlikely that any of these constituents could be present at such high levels following incineration in a unit which has met the 40 CFR 264.343(a)(2) requirements. Furthemore, the results of the ash analyses previously presented for samples of the wastes incinerated at the EPA Combustion Research Facility illustrates that incineration can successfully destroy constituents in the waste matrix that are most difficult to incinerte, *i.e.*, the chlorinated dioxins and furans. Finally, the Agency is confident that if the incineration process is successful in meeting the levels for the constituents in Condition (3) (including dioxins and furans), the organics from Table 7 that are not included could not exist in the incineration residues at levels remotely approaching 1000 ppm.

The Agency requests comments on whether those constituents that are listed in 40 CFR part 261, Appendix VII for F020 and F023 (2,3,4,6-tetrachlorophenel, 2,4,5-trichlorophenol, and 2,4,5-T) should be included in the initial and subsequent verification testing requirements, despite the low probability that they could be found at levels of concern in the incineration by-products.

In addition, Condition (3) does not require testing for vinyl chloride (0.18 ppm) because this substance is a gas at room temperature. EPA believes that this gaseous substance is highly unlikely to be present in the heated residues exiting from an incinerator.

Condition (3) also sets maximum allowable waste concentrations for 2,3,7,8-tetrachlorodibenzo-p-dioxin equivalent concentrations (or 2,3,7,8-TCDD equivalents). 2,3,7,8-TCDD equivalents are calculated by multiplying the toxicity equivalent factors listed below by any detected levels of tetra-, penta-, hexa-, or heptachlorinated dibenzo-p-dioxins of furans and summing the results (*i.e.*, the 2,3,7,8-TCDD equivalent concentration). The resultant value would be compared to the equivalent level listed in Condition (3). When ADPC&E is able to determine that a detected homolog is not 2,3,7,8-substituted, the factors listed in the third column may be used (*i.e.*, listed under "Non-2,3,7,8-PCDDs and PCDFs"). If ADPC&E determines that either 2,3,7,8-substituted homologs are present or that the analysis cannot differentiate the ring substitution pattern, then the factors listed in the second column must be used.

TOXICITY EQUIVALENCE FACTORS

Homolog	2,3,7,8-PCDDs and PCDFs or unspecified homologs	Non-2,3,7,8-PCDDs and PCDFs
TCDDs	1	0.01
PeCDDs	0.5	0.005
HxCDDs	0.04	0.0004
HpCDDs	0.001	0.00001
TCDFs	0.1	0.001
PeCDFs	0.1	0.001
HxCDFs	0.1	0.0001
HpCDFs	0.001	0.00001

These factors were developed by the Agency's Chlorinated Dioxins Workgroup (CDWG) to assess the risks associated with exposure to a mixture of chlorinated dioxin homologs, and were derived from an evaluation of the structure-activity relationships of the homologs using their carcinogenic, reproductive, and biochemical effects. (Risk Assessment Forum. "Interim Procedures for Estimating Risk Associated with Exposures to Mixtures of chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs)". October, 1986.)

Condition (3) also specifies that the petitioner use Method 8290 (a high resolution gas chromatography/high resolution mass spectrometry analytical method) and achieve certain practical quantitation limits (PQLs) when analyzing the petitioned byproducts for dioxins and furans under the verification testing conditions. As discussed in other dioxin-related exclusions (see for example 53 FR 31, January 4, 1988), the Agency believes that it is appropriate to establish maximum acceptable quantitation limits for the dioxins and furans because the health-based levels for this class of compounds are low and the cited method is extremely sensitive. Therefore, in order to ensure that sufficiently low levels of dioxins and furans are detected, EPA is specifying PQLs for these analytes.

PQLs provide a reasonable degee of certainty that true values, rather than false negatives (or false positives), are presented. The PQL takes into account a number of factors that are difficult to control and that contribute to the uncertainty associated with a minimum detection limit (MDL), such as high background levels, matrix interferences, and operator or instrument variability. EPA has generally estimated PQL to be about 3 to 10 times the MDL (see, for example, 50 FR 46902, November 13, 1985). Based on dioxin analyses completed using Method 8290, EPA believes these PQLs are appropriate.

(3) *Delisting levels:* If the concentrations in one or more of the incineration by-products for any of the hazardous constituents listed below exceed their respective maximum allowable concentrations (ppm) also listed below, the batch of failing waste must either be re-treated untili it meets these levels or managed and disposed of in accordance with Subtitle C of RCRA.

(a) Inorganics (Leachable):

Arsenic	0.32
Barium	6.3
Cadmium	0.06
Chromium	0.32
Cyanide	4.4
Lead	0.32
Mercury	0.01
Nickel	4.4
Selenium	0.06
Silver	0.32

Metal concentrations must be measured in the waste leachate as per 40 CFR 261.24. Cyanide extractions must be conducted using distilled water.

(b) Organics:

Benzene	0.87
Benz (a) anthracene	0.10
Benzo (a) pyrene	0.04
Benzo (b) fluoranthene	0.16
Chlorobenzene	152
o-Chlorophenol	44
Chrysene	15
2, 4-D	107
DDE	1.0
Dibenz (a,h) anthracene	0.007
1,4-Dichlorobenzene	265
1,1-Dichloroethylene	1.3
trans-1, 2-Dichloroethylene	37
Dichloromethane	0.23
2, 4-Dichlorophenol	43
Hexachlorobenzene	0.26
Indeno (1, 2, 3-cd) pyrene	30
Polychlorinated biphenyls	12
1, 2, 4, 5-Tetrachlorobenzene	56
Tetrachloroethylene	3.4
Trichloroethylene	1.1
2, 4, 6-Trichloorphenol	0.35
(c) Chlorinated dioxins and furans:	
2, 3, 7, 8-Tetrachlorodibenzo-p-dioxins equivalents	$4x10^{-7}$

The petitioned by-products must be analyzed for the tetra-, penta-, hexa-, and heptachlorodibenzo-p-dioxins, and the tetra-, penta-, hexa-, and heptachlorodibenzofurans to determine the 2, 3, 7, 8-tetrachlorodibenzo-dioxin equivalent concentrations. The

analyses must be conducted using Method 8290, a high resolution gas chromatography/high resolution mass spectrometry method, and must achieve practical quantitation limits of 15 parts per trillion (ppt) for the tetra- and penta- homologs, and 37 ppt for the hexa- and hepta- homologs.

(4) *Termination of Testing:* Due to the possible variability of the incinerator feeds, the testing requirements of Condition (1) (B) will continue indefinitely.

The Agency request comments on an alternate to this termination of testing requirement. Specifically, the Agency requests comments on whether ADPC&E should be permitted to terminate testing requirements for one or more of the incineration by-products if they can demonstrate that four consecutive weekly composite samples for a given waste meet all of the delisting criteria. If the testing requirements are completely terminated in this way, then the waste holding requirements in condition (2) would not be necessary. Commenters should also address whether testing (and waste holding requirements) should be re-initiated under certain operating conditions (*e.g.*, process upsets).

(5) *Data submittals:* Within one week of system start-up, ADPC&E must notify the Section Chief, Variances Section (see address below) when the full-scale incineration system is on-line and waste treatment has begun. The data obtained through condition (1) (A) must be submitted to the Section Chief, Variances Section, PSPD/OSW (OS-343), U.S. EPA, 401 M Street, S.W., Washington, DC 20460, within the time period specified. At the Section chief's request, ADPC&E must submit analythical data obtained through condition (1) (B) within the time period specified by the Section Chief. Failure to submit the required data obtained from condition (1) (A) within the specified time period or to maintain the required records for the time specified in Condition (1) (B) (or to submit data within the time specified by the Section Chief) will be considered by the Agency, at its discretion, sufficient basis to revoke ADPC&E's exclusion to the extent directed by EPA. All data must be accompained by the following certification statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. Section 1001 and 42 U.S.C. Section 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

If made final, the proposed exclusion will apply only to the processes and waste volume covered by the original demonstration. The facility would require a new exclusion if its treatment processes are altered, or if the incinerator waste feeds are significantly changed in waste composition, or if there is a significant increase in waste volume. Accordingly, the facility would need to file a new petition for altered processes or altered waste feed composition or volume. The facility must treat wastes generated from changed processes or waste feeds as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from subtitle C regulation upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site treatment, storage, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if finally promulgated, will become effective immediately upon such final promulgation. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its wastes as non-hazardous. There is no additional economic impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VII. List of Subjects in 40 CFR Part 261

Hazardous Materials, Waste Treatment and Disposal, Recycling.

Dated: April 2, 1990.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resources Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Table 1 of Appendix IX of part 261, add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
Arkansas Department of Pollution Control and Ecology.	Vertac Superfund site, Jacksonville, Arkansas	Kiln ash, cyclone ash, and calcium chloride salts from incineration of residues (EPA Hazardous Waste No. F020 and F023) generated from the primary production of 2,4,5–T and 2,4–D after [insert date of final rule's publication]. This one-time exclusion applies only to the incineration of the waste materials described in the petition, and is conditional upon the data obtained from ADPC&E's full-scale incineration facility. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, ADPC&E must implement a testing program for the petitioned waste. This testing program must meet the following conditions for the exclusion to be valid: (1) *Testing*: Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW–846 methodologies. (A) *Initial Testing*: During the first four weeks of operation of the full-scale treatment system, representative grab samples must be taken from each drum of kiln ash and cyclone ash generated from each 24 hours of operation, and the grab samples composited to form one composite sample of ash for each 24-hour period. Representative grab samples must also be taken from each drum of calcium chloride salts generated from each 24 hours of operation and composited to form one composite sample of calcuim chloride salts for each 24-hour period. Prior to disposal of the residues from each 24-hour sampling period, the daily composite must be analyzed for all of the constituents listed in Condition (3). ADPC&E must report the analytical test data, including quality control information, obtained during this initial period no later than 90 days after the start of the operation. (B) *Subsequent Testing*: Representative grab samples of each drum of kiln and cyclone ash generated from each week of operation must be composited to form one composite sample of ash for each weekly period. Representative grab samples of each drum of calcium chloride salts generated from each week of operation must also be composited to form one composite sample of calcium chloride salts for each weekly period. Prior to disposal of the residues from each weekly sampling period, the weekly composites must be analyzed for all of the constituents listed in Condition (3). The analytical data, including quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA. (2) *Waste Holding*: The incineration residues that are generated must be stored as hazardous until the initial verification analyses or subsequent analyses are completed. If the composite incineration residue samples (from either Condition (1)(A) or Condition (1)(B)) do not exceed any of the delisting levels set in Condition (3), the incineration residues corresponding to these samples may be managed and disposed of in accordance with all applicable solid waste regulations. If any composite incineration residue sample exceeds any of the delisting levels set in Condition (3), the incineration residues generated during the time period corresponding to this sample must be retreated until they meet these levels (analyses must be repeated) or managed and disposed of in accordance with Subtitle C of RCRA.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Incineration residues which are generated but for which analysis is not complete or valid must be managed and disposed of in accordance with Subtitle C of RCRA, until valid analyses demonstrate that the wastes meet the delisting levels. (3) *Delisting levels*: if the concentations in one or more of the incineration by-products for any of the hazardous constituents listed below exceed their respective maximum allowable concentrations (ppm) also listed below, the batch of failing waste must either be re-treated until it meets these levels or managed and disposed of in accordance with Subtitle C of RCRA. (a) Inorganics (Leachable): Arsenic—0.32. Barium—6.3. Cadmium—0.06. Chromium—0.32. Cyanide—4.4. Lead—0.32. Mercury—0.01. Nickel—4.4. Selenium—0.06. Silver—0.32. Metal concentrations must be measured in the waste leachate as per 40 CFR § 261.24. Cyanide extractions must be conducted using distilled water. (b) Organics: Benzene—0.87. Benz (a) anthracene—0.10. Benzo (a) pyrene—0.04. Benzo (b) fluoranthene—0.16. Chlorobenzene—152. o-Chlorophenol—44. Chrysene—15. 2.4-D-107. DDE—1.0. Dibenz (a,h) anthracene—0.007. 1.4-Dichlorobenzene—265. 1,1-Dichloroethylene—1.3. trans-1,2-Dichloroethylene—37. Dichloromethane—0.23. 2.4-Dichlorophenol—43. Hexachlorobenzene—0.26. Indeno (1,2,3-cd) pyrene—30. Polychlorinated biphenyls—12. 1,2,4,5-Tetrachlorobenzene—56. Tetrachloroethylene—3.4. Trichloroethylene—1.1. 2,4,6-Trichlorophenol—0.35. (c) Chlorinated dioxins and furans 2,3,7,8-Tetrachlorodibenzo-p-dioxin equivalents—$4X10^{-7}$ The petitioned by-products must be analyzed for the tetra-, penta-, hexa-, and heptachlorodibenzo-p-dioxins, and the tetra-, penta-, hexa-, and heptachlorodibenzofurans to determine the 2,3,7,8-tetrachlorodibenzo-p-dioxin equivalent concentration. The analysis must be conducted using Method 8290, a high resolution gas chromatography/high resolution mass spectrometry method, and must achieve practical quantitation limits of 15 parts per trillion (ppt) for the tetra- and penta- homologs, and 37 ppt for the hexa- and hepta- homologs. (4) *Termination of Testing*: Due to the possible variability of the incinerator feeds, the testing requirements of Condition (1)(B) will continue indefinitely.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) *Data submittals*: Within one week of system start-up, ADPC&E must notify the Section Chief, Variances Section (see address below) when the full-scale incineration system is on-line and waste treatment has begun. The data obtained through condition (1)(A) must be submitted to the Section Chief, Variances Section, PSPD/OSW (OS-343), U.S. EPA, 401 M Street, S.W., Washington, DC 20460, within the time period specified. At the Section Chief's request, ADPC&E must submit analytical data obtained through condition (1)(B) within the time period specified by the Section Chief. Failure to submit the required data obtained from condition (1)(A) within the specified time period or to maintain the required records for the time specified in Condition (1)(B) (or to submit data within the time specified by the Section Chief) will be considered by the Agency, at its discretion, sufficient basis to revoke ADPC&E's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. Section 1001 and 42 U.S.C. Section 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

[FR Doc. 90-8397 Filed 4-10-90; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6987]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A

flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restrictions unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARKANSAS	
Benton County (Unincorporated Areas)	
Osage Creek:	
Approximately 1.92 miles downstream of County Route 51	*1,159
Approximately 210 feet upstream of Turtle Creek Road	*1,280
Spring Creek:	
Approximately 105 feet downstream of confluence with Puppy Creek	*1,164
Approximately 625 feet upstream of confluence of Tributary 3 to Spring Creek	*1,233
Puppy Creek:	
Approximately 450 feet downstream of County Route 60	*1,165
Approximately 634 feet upstream of County Route 240	*1,251
Decatur Branch:	
Approximately 106 feet downstream of County Route 346	*1,265
Approximately 845 feet upstream of County 349	*1,318
Wolf Creek:	
Approximately 110 feet downstream of Kansas City Southern Railroad	*1,114
Approximately 158 feet upstream of County Route 346	*1,205
Little Sugar Creek:	
Approximately 2.4 miles downstream of State Route 340	*970
Approximately 530 feet upstream of State Route 94	*1,140
McKisic Creek:	
Approximately 211 feet downstream of State Route 72	*1,162
Approximately 1,110 feet upstream of County Route 578	*1,225
Tributary 1 to McKisic Creek:	
Approximately 2.8 miles upstream of its confluence with McKisic Creek	*1,193
Approximately 3.8 miles upstream of its confluence with McKisic Creek	*1,266

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Tributary 2 to Little Osage Creek:	
Approximately 1,370 feet downstream of "I" Street S.W.	*1,270
Approximately 450 feet downstream of "I" Street S.W.	*1,272
Turtle Creek Tributary:	
At confluence with Turtle Creek	*1,276
North 13th Street	*1,323
Blossom Way Creek:	
At South 26th Street	*1,276
Approximately 225 feet upstream of South 1st Street	*1,342
Sager Creek:	
Approximately 1.16 miles downstream of Dogwood Street	*1,039
Approximately 430 feet upstream of Box Springs Road	*1,130
South Fork Prairie Creek:	
Approximately 1,350 feet downstream of State Route 12	*1,133
Approximately 170 feet upstream of Lake Atlanta Road	*1,162
Tributary 1 to Sager Creek:	
At University Street	*1,091
Approximately 1,560 feet upstream of University Street	*1,109
Tributary 2 to Sager Creek:	
At confluence with Sager Creek	*1,106
Approximately 275 feet upstream of State Routes 59 and 68	*1,148
Tributary 3 to Sager Creek:	
At the State boundary	*1,040
Downstream side of State Route 43	*1,086
Tributary 3 to Spring Creek:	
At the County boundary	*1,228
Approximately .8 mile upstream of County boundary	*1,278
Maps available for inspection at the Benton County Courthouse, Bentonville, Arkansas.	
Send comments to The Honorable Bruce Rutherford, Benton County Judge, 203 East Central, Room 201, Bentonville, Arkansas 72712.	
Little Flock (Town), Benton County	
Little Sugar Creek:	
Approximately 260 feet upstream of State Route 72	*1,093
Approximately 1,850 feet downstream of State Route 94	*1,132
Maps available for inspection at the City Hall, Little Flock, Arkansas.	
Send comments to The Honorable Ellis Thiel, Mayor of the Town of Little Flock, Benton County, 3103 Woods Lane, Little Flock, Arkansas 72756.	
GEORGIA	
Buchanan (City), Haralson County	
Cochran Creek:	
About 1,000 feet downstream of Dallas Road	*1,157
Just downstream of Dallas Road	*1,164
Just upstream of Dallas Road	*1,172
Just downstream of Dam	*1,173
Just upstream of Dam	*1,181
Just downstream of Buchanan Bypass	*1,208
Maps available for inspection at the City Hall, Buchanan, Georiga.	
Send comments to The Honorable Donald Rainey, Mayor, City of Buchanan, P.O. Box 6, Buchanan, Georgia 30113.	
Carroll County (Unincorporated Areas)	
Little Tallapoosa River:	
About 300 feet downstream of State Route 166	*969
About 4,100 feet upstream of Hickory Level Road	*1,020
Buffalo Creek:	
About 300 feet downstream of Laurel Road	*970
About 1,250 feet upstream of State Route 166	*997

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Soil Conservation Office, 102 City Hall Avenue, Carrollton, Georgia.	
Send comments to The Honorable David Perry, Chairman, County Commissioners, Carroll County, P.O. Box 3388, Carrollton, Georgia 30117.	
Dawson County (Unicorporated Areas)	
Etowah River:	
Just upstream of State Route 9	*1038
About 1900 feet upstream of State Route 136	*1090
Mill Creek:	
At mouth	*1044
About 0.68 mile upstream of Thompson Road	*1099
Black Mill Creek:	
At mouth	*1040
Just downstream of Blacks Mill Road	*1082
Just upstream of Blacks Mill Road	*1105
About 1.77 miles upstream of Blacks Mill Road	*1134
Maps available for inspection at the County Commissioner's Office, County Courthouse, Dawsonville, Georgia.	
Send comments to The Honorable Joe Lane Cox, County Commissioner, Dawson County, P.O. Box 192, Dawsonville, Georgia 30534.	
MAINE	
Bethel (Town) Oxford County	
Androscoggin River:	
At the downstream corporate limits	*627
At the upstream corporate limits	*665
Sunday River:	
At confluence with the Androscoggin River	*650
At the upstream corporate limits	*650
Alder River:	
At confluence with the Androscoggin River	*652
At the upstream corporate limits	*710
Pleasant River:	
A confluence with the Androscoggin River	*664
Approximately 50 feet upstream of U.S. Route 2	*664
Mill Brook:	
At confluence with the Androscoggin River	*653
Approximately 0.2 mile upstream of State Route 5 (Mill Road)	*656
Kendall Brook:	
At confluence with the Alder River	*652
At the upstream corporate limits	*656
Twitchell Brook:	
At confluence with Androscoggin River	*652
Approximately 0.7 mile upstream of U.S. Route 2 and State Routes 5 & 26	*656
Sanding Brook:	
At confluence with the Alder River	*652
Approximately 50 feet upstream of Mason Street	*725
Maps available for inspection at the Town Clerk's Office, Bethel, Maine.	
Send comments to The Honorable Arlan Jodrey, Chairman of the Town of Bethel Board of Selectmen, Oxford County, Town Office, P.O. Box 108, Bethel, Maine 04217.	
MASSACHUSETTS	
Boxford (Town), Essex County	
Parker River:	
Approximately 230 feet downstream of downstream corporate limits	*87
Approximately 75 feet upstream of Washington Street	*134
Fish Brook:	
At confluence with Ipswich River	*41
Approximately 300 feet upstream of upstream corporate limits	*114
Ipswich River:	
At confluence of Fish Brook	*41
At upstream corporate limits	*41
Maps available for inspection at the Town Hall Selectman's Office, Boxford, Massachusetts.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Robert Conroy, Chairman of the Town of Boxford Board of Selectmen, Essex County, Town Hall, 28 Middletown Street, Boxford, Massachusetts 01921.	
MISSISSIPPI	
Alcorn County (Unincorporated Areas)	
Cane Creek:	
Just upstream of U.S. Highway 72	*403
Just downstream of Wenasoga Road	*429
Turner Creek:	
About 1500 feet downstream of Norfolk Southern Railway	*446
Just downstream of Norfolk Southern Railway	*450
Just upstream of Norfolk Southern Railway	*455
Just downstream of Wenasoga Road	*464
Just upstream of Wenasoga Road	*470
About 900 feet upstream of Wenasoga Road	*472
Bridge Creek:	
About 1100 feet downstream of Whitmore Levee Road	*406
About 0.7 mile upstream of Illinois Central Railroad	*422
Maps available for inspection at the Chancery Clerk's Office, County Courthouse, Corinth, Mississippi.	
Send comments to The Honorable Travis Little, President, Board of Supervisors, Alcorn County, P.O. Box 112, Corinth, Mississippi 38834.	
Burnsville (City), Tishomingo County	
Tennessee Tombigbee River: Within community	*420
Maps available for inspection at the City Clerk's Office, City Hall, Burnsville, Mississippi.	
Send comments to The Honorable Bobby H. Johnson, Mayor, City of Burnsville, P.O. Box 308, Burnsville, Mississippi 38833.	
Lafayette County (Unincorporated Areas)	
Hudson Creek:	
At mouth	*286
About 1.3 miles upstream of county road	*353
Clear Creek:	
About 400 feet downstream of confluence of Hudson Creek	*286
About 0.9 miles upstream of county road	*315
West Goose Valley Creek:	
At mouth	*306
About 1.0 mile upstream of State Highway	*364
East Goose Valley Creek:	
About 500 feet downstream of confluence of West Goose Valley Creek	*305
About 1800 feet upstream of State Highway 6 Bypass	*370
Davidson Creek:	
About 2.5 miles upstream of mouth	*318
About 1500 feet downstream of State Highway 314	*355
Burney Branch:	
About 1800 feet upstream of mouth	*299
Just downstream of Grade Control Structure No. 3	*317
Just upstream of Grade Control Structure No. 3	*322
Just downstream of Grade Control Structure No. 4	*338
About 400 feet upstream of Grade Control Structure No. 4	*350
Sardis Lake: Within community	
Maps available for inspection at the Chancery Clerk's Office, County Courthouse, Oxford, Mississippi.	
Send comments to The Honorable Ray Sockwell, President, Board of Supervisors, Lafayette County, P.O. Box 1240, Oxford, Mississippi 38655.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Marshall County (Unincorporated Areas)	
Byhalia Creek:	
About 1.2 miles downstream of State Highway 309	*305
About 2.2 miles upstream of Burlington Northern Railroad	*357
Nonconnah Creek Lateral B:	
About 1300 feet downstream of northern county boundary	*333
About 1.4 miles upstream of Quinn Road	*373
Sardis Lake: Within community	286
Maps available for inspection at the Board of Supervisor's Office, County Courthouse, Holly Springs, Mississippi.	
Send comments to The Honorable Charles R. McClatchy, President, Board of Supervisors, Marshall County, P.O. Box 219, Holly Springs, Mississippi 38653.	
Tallahatchie County (Unincorporated Areas)	
Tillatoba Creek:	
About 500 feet downstream of confluence of North Fork Tillatoba Creek	*180
About 0.9 mile upstream of confluence of Hunter Creek	*191
North Fork Tillatoba Creek:	
At mouth	*180
About 1350 feet upstream of State Highway 35	*182
Hunter Creek:	
At mouth	*187
About 2400 feet upstream of State Highway 32	*191
Yalobusha River:	
About 1.3 miles of county boundary	*138
About 4 miles upstream of county boundary	*142
Maps available for inspection at the County Administrator's Office, County Courthouse, Charleston, Mississippi.	
Send comments to The Honorable Walter Guy Burkhalter, President, Board of Supervisors, Tallhatchie County, P.O. Box 130, Charleston, Mississippi 38921.	
NEW HAMPSHIRE	
Sunapee (Town), Sullivan County	
Otter Pond: Entire shoreline within community	*1,129
Lake Sunapee: Entire shoreline within community	*1,095
Trask Brook:	
At downstream corporate limits	*923
Approximately 100 feet downstream of Nutting Road	*953
Unnamed Tributary:	
At confluence with Trask Brook	*939
Approximately 75 feet downstream of Sioux Path Road	*960
Sugar River:	
At downstream corporate limits	*912
Approximately 275 feet upstream of State Route 11	*1,014
Maps available for inspection at the Town Office Building, Sunapee, New Hampshire.	
Send comments to The Honorable Joyce Hill, Sunapee Town Administrator, Sullivan County, Main Street, Sunapee, New Hampshire 03782.	
NEW JERSEY	
Andover (Township), Sussex County	
Paulins Kill:	
Downstream corporate limits	*562
Upstream corporate limits	*562
Pequest River	
Downstream corporate limits	*568
Approximately 120' upstream of U.S. Route 206	*589
Kymers Brook:	
Downstream corporate limits	*570
Upstream corporate limits	*575

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Minicipal Building, 134 Newton-Sparta Road, Newton, New Jersey.	
Send comments to The Honorable Thomas Clark, Mayor of the Township of Andover, Sussex County, 134 Newton-Sparta Road, Newton, New Jersey 07860.	
NEW YORK	
Webster (Village), Monroe County	
Mill Creek:	
Downstream corporate limits	*390
Upstream corporate limits	*444
Maps available for inspection at the Village Hall, 28 West Main Street, Webster, New York.	
Send comments to The Honorable Robert R. Johnville, Mayor of the Village of Webster, Monroe County, Village Hall, 28 W. Main Street, Webster, New York 14580.	
OHIO	
Glenmont (Village), Holmes County	
Black Creek:	
About 0.9 mile downstream of County Route 25	*868
About 1,800 feet upstream of State Route 520	*892
Maps available for inspection at the Village Hall, Glenmont, Ohio. Send comments to the Honorable Joe Weaver, Mayor, Village of Glenmont, P.O. Box 497, Glenmont, Ohio 44628.	
Holmes County (Unincorporated Areas)	
Black Creek:	
About 0.9 mile downstream of County Route 25	*868
About 3,100 feet upstream of State Route 520	*899
Doughty Creek:	
About 1,500 feet downstream of confluence of Bucks Run	*821
About 2,400 feet upstream of State Route 83	*835
Killbuck Creek:	
About 2,800 feet downstream of Front Street	*812
About 2,800 feet upstream of Duncan Street	*814
At confluence of Sand Run	*819
About 1.4 miles upstream of State Route 39	*828
About 550 feet downstream of County Route 320	*837
About 2,100 feet upstream of County Route 320	*838
Maps available for inspection at the County Planning Commission, 2 South Clay Street, Millersburg, Ohio. Send comments to The Honorable Ben Hill, Chairman, Board of Commissioners, Holmes County, 2 South Clay Street, Millersburg, Ohio 44654.	
Millersburg (Village), Holmes County	
Killbuck Creek:	
About 1.1 miles downstream of confluence of Sapps Run	*819
About 1 mile upstream of State Route 39	*827
Maps available for inspection at the Village Hall, 1 North Washington Street, Millersburg, Ohio. Send comments to The Honorable Douglas Aikins, Mayor, Village of Millersburg, 1 North Washington Street, Millersburg, Ohio 44654.	
Roseville (Village), Muskingum and Perry Counties	
Moxahala Creek:	
About 1,300 feet downstream of Main Street	*734
About 600 feet upstream of Athens Road	*742
Maps available for inspection at the City Hall, 241 North Main Street, Roseville, Ohio. Send comments to The Honorable Marcia Taylor, Mayor, Village of Roseville, 241 North Main Street, Roseville, Ohio 43777.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
OKLAHOMA	
Burlington (Town), Alfalfa County	
Stink Creek:	
Approximately 1,350 feet downstream of downstream corporate limits	*1,217
Approximately 1,030 feet upstream of upstream corporate limits	1,225
Maps available for inspection at Main Street, Burlington, Oklahoma.	
Send comments to The Honorable J.D. Lambert, Mayor of the Town of Burlington, Alfalfa County, P.O. Box 216, Burlington, Oklahoma 73722.	
Sequoyah County (Unincorporated Areas)	
Arkansas River:	
Approximately 840 feet downstream of U.S. Route 64	*418
Approximately 1.25 miles upstream of U.S. Route 64	*421
At Interstate Route 40	*477
At a point approximately 1,900 feet upstream of U.S. Route 64 and State Route 100	*482
Illinois River:	
At confluence with Arkansas River	*478
At Tenkiller Ferry Dam	*519
Sallisaw Creek:	
Approximately 1.73 miles downstream of Interstate Route 40	*477
Approximately 4 miles upstream of Union Pacific Railroad bridge	*540
Approximately 0.78 mile downstream of Kansas City Southern Railway bridge	*573
Approximately 0.61 mile upstream of Kansas City Southern Railway bridge	*616
Little Sallisaw Creek:	
Approximately 1.3 miles upstream of confluence with Sallisaw Creek	*467
At U.S. Route 64	*495
Little Skin Bayou:	
Approximately .6 mile upstream of confluence with Big Skin Bayou	*448
Approximately 0.71 mile upstream of Flat Rock Road	*555
Hog Creek:	
At confluence with Little Sallisaw Creek	*494
Approximately 0.94 mile upstream of State Route 101	*620
Camp Creek:	
Approximately 3.4 miles upstream of confluence with Arkansas River	*419
Approximately 1.06 miles upstream of Section Line Road	*605
Shiloh Creek:	
At Interstate 40	*495
Approximately 350 feet upstream of Kansas City Southern Railway	*537
Stream A:	
Approximately 1,150 feet downstream of Roland Road	*429
At U.S. Route 64	*433
Poague Branch:	
At confluence with Little Sallisaw Creek	*452
At Interstate Route 40	*466
Onion Creek:	
Approximately 1,850 feet downstream of Section Line Road	*496
Approximately 1,300 feet upstream of Kansas City Southern Railway bridge	*535
Old Possum Branch:	
At confluence with Camp Creek	*479
Approximately 1,050 feet upstream of Section Line Road	*568
Tributary 1:	
At confluence with Little Sallisaw Creek	*483
Approximately 900 feet downstream of Interstate Road 40	*497
Stream B:	
Approximately 1,730 feet upstream of confluence with Stream A	*450
Approximately 460 feet upstream of Dorcus Street	*497
Tributary 3:	
At confluence with Little Sallisaw Creek	*478
Downstream side of Cedar Street	*516
Onion Creek Tributary:	
Approximately 600 feet upstream of confluence with Onion Creek	*524
Approximately 1,100 feet upstream of confluence with Onion Creek	*526
West Branch of Tributary 3:	
Approximately 300 feet upstream of confluence with Tributary 3	*501
Approximately .4 mile upstream of Cedar Street	*520
Maps available for inspection at the ASCS Board, 101 McGee Drive, Sallisaw, Oklahoma.	
Send comments to The Honorable Jack Keck, Chairman of the Sequoyah County Board of Commissioners, Sequoyah County Courthouse, 120 E. Chickasaw, Sallisaw, Oklahoma 74955.	
Stephens County (Unincorporated Areas)	
Armstrong Creek:	
At downstream County boundary	*1,092
At upstream County boundary	*1,178
Clandy Creek:	
At upstream side of U.S. Route 81	*1,042
At upstream side of Seminole Street	*1,063
Cow Creek:	
Approximately 1,600 feet downstream of the downstream Comanche corporate limits	*976
Approximately 1.3 miles upstream of Bois D'Arc Avenue	1,098
Stage Stand Creek:	
Approximately 0.5 mile upstream of confluence with Little Beaver Creek	*1,032
Approximately .9 mile downstream of the City of Duncan corporate limits	*1,116
Walker Creek:	
At confluence with Waurika Lake	*962
Approximately 1.3 miles upstream of State Route 53	*987
Willow Creek:	
Approximately 300 feet upstream of Oklahoma, Kansas, and Texas Railroad	*1,039
At downstream side of Fair Park Boulevard	*1,085
Walker Creek Tributary:	
At confluence with Waurita Lake	*962
Approximately 1.0 mile upstream of confluence with Waurika Lake	983
Tributary D:	
At confluence with Willow Creek	*1,079
At downstream side of Oklahoma, Kansas, and Texas Railroad	*1,084
Tributary F:	
At confluence with Cow Creek	*1,052
At downstream side of State Route 7	*1,090
Waurika Lake:	
Entire shoreline within county	*962
Map available for inspection at the Stephens Courthouse, Duncan, Oklahoma.	
Send comments to The Honorable Gary Ledford, Chairman of the Stephens County Board of Commissioners, Stephens Courthouse, Duncan, Oklahoma 73533.	
SOUTH CAROLINA	
Laurens County (Unincorporated Areas)	
Reedy Fork Creek:	
About 1.59 miles downstream of Wheelon Road	*578
About 1.90 miles upstream of Wheelon Road	*663
Little River:	
About 950 feet downstream of State Route 127	*542
About 2,700 feet upstream of Ghost Creek Road	*598
Tributary LR-1:	
At mouth	*546
About 0.94 mile upstream of mouth	*561
Tributary LR-3:	
About 0.77 mile upstream of mouth	*581
About 0.95 mile upstream of mouth	*590
Burnt Mill Creek:	
About 2,000 feet downstream of CSX railroad	*559
Just downstream of CSX railroad	*565
Just upstream of CSX railroad	*574
About 500 feet upstream of Red Tip Lane	*591
Scout Branch:	
At mouth	*590
About 1,500 feet upstream of mouth	*594
Map available for inspection at the County Courthouse, Laurens, South Carolina.	
Send comments to The Honorable Ernest B. Segars, Administrative Assistant, Laurens County, P.O. Box 445, Laurens, South Carolina 29360.	
TEXAS	
Blanco County (Unincorporated Areas)	
Pedernales River:	
Approximately 40 miles above confluence with Colorado River (Lake Travis)	*1,038
Approximately 2,900 feet upstream of U.S. Route 281	*1,138
Town Creek:	
At confluence with Pedernales River	*1,128
At City of Johnson City corporate limits	*1,151
Deer Creek:	
At confluence with Pedernales River	*1,125
At private road approximately 1,640 feet upstream of Bratendale Road	*1,265
Maps available for inspection at the Blanco County Courthouse, Johnson City, Texas.	
Send comments to The Honorable Charles Scott, Blanco County Judge, P.O. Box 471, Johnson City, Texas 78636.	
Johnson City (City), Blanco County	
Town Creek:	
Downstream corporate limits	*1,151
Approximately 68 feet upstream of U.S. Route 281	*1,160
Deer Creek:	
At the upstream side of old U.S. Route 290	*1,194
Approximately 450 feet upstream of old U.S. Route 290	*1,196
Maps available for inspection at the City Hall, Johnson City, Texas.	
Send comments to The Honorable Ralph Moss, Mayor of the City of Johnson City, Blanco County, P.O. Box 369, Johnson City, Texas 78636.	
Lampasas County (Unincorporated Areas)	
Clark Creek:	
Approximately 1,875 feet downstream of FM 2657	*1,033
Approximately 0.65 mile upstream of FM 2657 or at County Route 134	*1,095
Stream BC-1:	
Approximately 510 feet downstream of State Route 190	*976
Approximately 940 feet upstream of Apache Trail	*1,034
Stream CC-1:	
At the downstream County boundary	*977
Approximately 130 feet upstream of FM 2657	*1,044
Colorado River:	
At the downstream County boundary	*1,060
Approximately 900 feet upstream of downstream County boundary	*1,070
Map available for inspection at the Lampasas County Courthouse, Judges Office, Lampasas, Texas.	
Send comments to The Honorable Norris Monroe, Lampasas County Judge, P.O. Box 231, Lampasas, Texas 76550.	
Stephens County (Unincorporated Areas)	
Hubbard Creek Lake:	
Damon Hubbard Creek	*1,194
Approximately 500 feet upstream of State Route 576	*1,208

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Gunsolus Creek:	
Approximately .6 mile downstream of FM 287	*1,170
Approximately 465 feet upstream of Valley Street	*1,191
Stream BK-2:	
Approximately .8 mile upstream of Live Oak Avenue	*1,214
Stream BK-3:	
Approximately 1,620 feet upstream of confluence with Gunsolus Creek	*1,191
Maps available for inspection at the Stephens County Courthouse, Breckenridge, Texas.	
Send comments to The Honorable Miller Tuttle, Stephens County Judge, Stephens County Courthouse, Breckenridge, Texas 76024.	
Young County (Unincorporated Areas)	
Mud Creek:	
At confluence with Salt Creek	*1,173
At Camp Road	*1,203
Salt Creek:	
Approximately .5 mile upstream of confluence with Brazos River	*1,036
At County boundary	*1,196
Dry Creek:	
At confluence with Salt Creek	1,036
Approximately 3 miles upstream of FM Route 2179	*1,097
Salt Creek West Branch:	
At confluence with Salt Creek	*1,187
Just downstream of FM Route 2178	*1,220
Stream GR-1:	
At confluence with Farmers Branch	*1,063
Approximately 1,450 feet upstream of confluence with Farmers Branch	*1,070
Farmers Branch:	
Approximately 2 miles upstream of confluence with Salt Creek	*1,047
Approximately 1,100 feet upstream of confluence of Stream GR-1	*1,069
Stream GR-2:	
At confluence with Dry Creek	*1,063
Approximately 150 feet downstream of City of Graham corporate limits	*1,082
Maps available for inspection at the Young County Courthouse, Graham, Texas.	
Send comments to The Honorable Ken Andrews, Young County Judge, P.O. Box 298, Graham, Texas 76046.	
VIRGINIA	
King George County (Unincorporated Areas)	
Potomac River:	
At Jones Pond	*7
Shoreline at Baber Point	*10
Upper Machodoc Creek:	
At State Route 218	*7
At State Route 614 extended	*10
Rappahannock River:	
Shoreline at Long Point	*7
Maps available for inspection at the County Administrator Office, King George, Virginia.	
Send comments to The Honorable L. Eldon James, Jr., King George County Administrator, P.O. Box 169, King George, Virginia 22485.	
WEST VIRGINIA	
Alderson (Town), Greenbrier and Monroe Counties	
Greenbrier River:	
Downstream corporate limits	*1,554
Approximately 300 feet upstream of upstream corporate limits	*1,554
Maps available for inspection at the Town Building, 202 South Monroe Street, Alderson, West Virginia.	
Send comments to The Honorable E. Sterling Hanger, Jr., Mayor of the Town of Anderson, Greenbrier and Monroe Counties, P.O. Box 179, Alderson, West Virginia 24910.	
Elizabeth (Town), Wirt County	
Little Kanawha River:	
Downstream corporate limits	*624
Upstream corporate limits	*626
Maps available for inspection at the Town Office, Elizabeth, West Virginia.	
Send comments to The Honorable James Cumberledge, Alderman of the Town of Elizabeth, Wirt County, Town Office, P.O. Box 478, Elizabeth, West Virginia 26143.	
Meadow Bridge (Town), Fayette County	
Meadow Creek:	
Downstream corporate limits	*2,355
Upstream corporate limits	*2,430
Laurel Branch:	
Confluence with Meadow Creek	*2,430
Upstream corporate limits	*2,432
Maps available for inspection at the Town Hall, Meadow Bridge, West Virginia.	
Send comments to The Honorable Rosetta McGuire, Acting Mayor for the Town of Meadow Bridge, Fayette County, Box 27, Meadow Bridge, West Virginia 25976.	
Ravenswood (City), Jackson County	
Ohio River:	
At the confluence of Sandy Creek	*592
Approximately 0.4 mile upstream of the confluence of Turkey Run	*593
Maps available for inspection at the City Hall, Ravenswood, West Virginia.	
Send comments to The Honorable Albert Workman, Mayor of the City of Ravenswood, Jackson County, 212 Walnut Street, Ravenswood, West Virginia 26114.	
WISCONSIN	
Amherst (Village), Portage County	
Tomorrow River:	
About 0.59 mile downstream of Wilson Street	*1,036
About 2,300 feet upstream of Amherst Dam	*1,044
Maps available for inspection at the Village Hall, 161 Mill Street, Amherst, Wisconsin.	
Send comments to The Honorable Richard Allen, Village President, Village of Amherst, 161 Mill Street, Box 36, Amherst, Wisconsin 54406.	
Westfield (Village), Marquette County	
Westfield Creek:	
About 380 feet downstream of U.S. Highway 51	*839
Just downstream of Spring Street Bridge/Dam	*840
About 0.54 mile upstream of West Fourth Street	*855
Maps available for inspection at the Village Hall, 109 East Third Street, Westfield, Wisconsin.	
Send comments to The Honorable Frances L. Demke, Village President, Village of Westfield, 109 East Third Street, Westfield, Wisconsin 53964.	

3. The proposed modified base (100-Year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)	
	Existing	Modified
HAWAII		
City and County of Honolulu		
Wailele: Stream 200 feet downstream of Kamehameha Highway Bridge.	None	*10
For 700 feet upstream of Kamehameha Highway Bridge.	None	*13
At Cane Haul Road	None	*24
Approximately 1,900 feet upstream of Cane Haul Road.	None	*53
Wailele Stream Left Bank Overflow: For 1,900 feet above Kamehameha Highway.	None	*10
250 feet downstream from Cane Haul Road.	None	*19
Approximately 1,500 feet above Cane Haul Road.	None	*53
Waikakalaua Stream: Just upstream of Kamehameha Highway Bridge.	None	*551
At Waikalani Place	None	*560
Just upstream of Private Road Bridge 1,200 feet above Waikalani Place.	None	*593
Just downstream from H-2 Freeway.	None	*636
Kalihi Stream: Just upstream of North School Street.	*98	*98
Just upstream of Likelike Highway.	None	*137
Just upstream of Nalanieha Street.	None	*230
Just upstream from intersection of Kalihi Street and Kalaepaa Drive.	None	*380
Approximately 1,500 feet downstream from Kalihi Street.	None	*452
Just downstream from Kalihi Street.	None	*515
Kamanaiki Stream: At confluence with Kalihi Stream.	None	*180
Just downstream of Lehua Street.	None	*208

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)	
	Existing	Modified
For 200 feet above Kalihi Street Loop.	None	*250
Approximately 1,500 feet upstream of Lauiani Street.	None	*426
Ulehawa Stream: At confluence with Ulehawa Channel.	None	*5
At Ulehawa Road Extended to stream.	None	*19
At Paakea Road Bridge	None	*41
Nanakuli Stream: Just below Farrington Highway Bridge.	None	*12
Between Farrington Highway and Mano Avenue extended.	None	*15
At Kauwahi Avenue extended.	None	*20
Approximately 5,000 feet upstream of Farrington Highway Bridge.	None	*70
Kaloi Gulch: Approximately 2,100 feet above Geiger Road.	None	*40
At Renton Road Bridge	None	*45
Approximately 950 feet downstream of Waimanalo Road Bridge.	None	*52
350 feet upstream of Waimanalo Road Bridge.	None	*59
North Halawa Stream: At Moanalua Freeway overpass.	None	*66
350 feet above Moanalua Freeway overpass.	None	*74
Approximately 3,900 feet above Monanalua Freeway overpass.	None	*141
Maps available for review at the City and County of Honolulu Department of Land Utilization, 650 South King Street, Honolulu, Hawaii. Send comments to The Honorable Frank Fasi, Mayor, City and County of Honolulu, Honolulu Hale, Honolulu, Hawaii 96813.		
NEW JERSEY		
Andover, Borough Sussex County		
Kymers Brook: Approximately 240 feet downstream of the downstream corporate limits.	None	*575
Approximately 50 feet upstream of U.S. Route 206.	None	*581
Maps available for inspection at the Borough Municipal Building, Andover, New Jersey. Send comments to the Honorable William Thomas, Mayor of the Borough of Andover, Sussex County, P.O. Box 630, Andover, New Jersey 07821.		
Green, Township Sussex County		
Pequest River: Downstream corporate limits.	None	*544
Upstream corporate limits.	None	*568
Kymers Brook: At the confluence with the Pequest River.	None	*566
Upstream corporate limits.	None	*571
Maps available for inspection at the Green Township Municipal Building, Tranquility, New Jersey. Send comments to the Honorable Lewis Caruso, Mayor of the Township of Green, Sussex County, P.O. Box 65, Tranquility, New Jersey 07879.		
NEW YORK		
Newport, Village Herkimer County		
West Canada Creek: At Newport Hydroelectric Dam.	None	*649
At upstream corporate limits.	None	*649
Maps available for inspection at the Village Library, South Main Street, Newport, New York. Send comments to the Honorable Carlton Blitz, Mayor of the Village of Newport, Herkimer County, Box 353, Newport, New York 13416.		
North Castle, Town Westchester County		
Bear Guter Creek: Approximately 25' downstream of State Route 120.	None	*358
Approximately 0.4 mile upstream of State Route 22.	None	*369
Byram River: Approximately 75' downstream of Interstate Route 684 South.	None	*368
Approximate 0.2 mile upstream of Byram Lake Road.	None	*430
Wampus River: Confluence with Byram River.	None	*370
Approximate 440' upstream of Wampus Lakes Road.	None	*451
Tributary 1 to Wampus River: Confluence with Wampus River.	None	*372
Approximate 1,540' upstream of Orchard Drive.	None	*470
Tributary 2 to Wampus River: Confluence with Wampus River.	None	*389
Approximate 0.7 mile upstream of Faraway Road.	None	*523
Tributary 3 to Wampus River: Confluence with Wampus River.	None	*419
Approximate 0.4 mile upstream of Wayne Valley Road.	None	*486
Maps available for inspection at the Building Department, 17 Bedford Road, Armonk, New York. Send comments to the Honorable John Lomardi, North Castle Town Supervisor, Westchester County, 15 Bedford Road, Armonk, New York 10504.		
OHIO		
Village of Holmesville Holmes County		
Killbuck Creek: About 550 feet downstream of County Route 320.	None	*837
About 2100 feet upstream of County Route 320.	None	*838
Maps available for inspection at the Village Offices, Main Street, Holmesville, Ohio. Send comments to the Honorable Rocky Snyder, Mayor, Village of Holmesville, Village Offices, Main Street, Holmesville, Ohio 44633.		
OREGON		
Tillamook County (Unincorporated Areas)		
Pacific Ocean: Approximately 900 feet west of intersection of Necarney Boulevard and Second Street.	None	*24
Approximate 800 feet west of intersection of Necarney Boulevard and Sixth Street.	None	*27
Approximately 750 feet west of intersections of Necarney Boulevard and Tenth Street.	None	*25

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)	
	Existing	Modified
Maps available for review at the Tillamook County Courthouse, Planning Department, 201 Laurel Avenue, Tillamook, Oregon.		
Send comments to the Honorable Ida Lane, Chairman, Tillamook County Board of Commissioners, 201 Laurel Avenue, Tillamook, Oregon 97141.		
PENNSYLVANIA		
Pine Creek, Township Jefferson County		
Sandy Lick Creek: At Pittsburgh and Shawmut Railroad.	None	*1,222
Approximate 300 feet upstream of CONRAIL.	None	*1,241
Mill Creek At the confluence with Sandy Lick Creek.	None	*1,236
Approximately 0.8 mile upstream of confluence with Sandy Lick Creek.	None	*1,246
Fivemile Run: At the confluence with Sandy Lick Creek.	None	*1,222
Upstream corporate limits.	None	*1,231
Maps available for inspection at the Township Building, Route 332, Brookville, Pennsylvania.		
Send comments to the Honorable L. Reid Henry, Chairman of the Township of Pine Creek Board of Supervisors, Jefferson County, R.D. #1, Brookville, Pennsylvania 15825.		
RHODE ISLAND		
Warwick, city, Kent County		
Naragansett Bay: Pawtuxet Cove.	*15	*21
Occupessatuxet Cove	15	*20
Confluence with Old Mill Creek.	15	*19
Warwick Cove	14	*20
East Side of Warwick Point.	15	*27
Apponaug Cove	14	*20
Greenwich Cove	14	*20
Potowomot River	14	*21
Maskerchugg Brook: At downstream corporate limits.	None	*76
Approximate 100 feet upstream of Interstate Route 95.	None	*114
Hardig Brook: Approximately 500 feet downstream of Orchard Road.	None	*48
At upstream corporate limits.	None	*120
Pawtuxet River: Approximate .7 mile downstream of Pontiac Dam.	29	*28
Upstream corporate limits.	*57	*55
Maps available for inspection at the City Hall, Planning Department, Warwick, Rhode Island.		
Send comments to the Honorable Francis X. Flaherty, Mayor of the City of Warwick, Kent County, City Hall, 3275 Post Road, Warwick, Rhode Island 02886.		

Issued: April 4, 1990.

Harold T. Duryee,

Administrator, Federal Insurance Administrator.

[FR Doc. 90-8383 Filed 4-10-90; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF DEFENSE

48 CFR Parts 247 and 252

Federal Acquisition Regulation Supplement; Contractor Liability for Loss and/or Damage

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is proposing changes to the DoD FAR Supplement to amend the clause at 252.247-7110 to increase the maximum contractor liability for loss or damage to personal property shipments made under Intra-City and Intra-Area Direct Procurement Method (DPM) contracts. A related change is proposed at 247.271-4.

DATES: Comments on the proposed rule should be submitted in writing at the address shown below on or before May 11, 1990, to be considered in the formulation of the final rule. Please cite DAR Case 89-113 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Eric Mens, Procurement Analyst, DAR Council, ODASD(P)/DARS, c/o OUSD(A)(M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Mens, Procurement Analyst, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DAR Council is proposing changes to the clause at 252.247-7110 and to section 247.271-4. The proposed rule will increase the maximum contractor liability for loss or damage to personal property shipments made under Intra-City and Intra-Area Direct Procurement Method (DMP) contracts, and will make the DFARS coverage consistent with contractor liability requirements for similar shipments under Personal Property Government Bills of Lading (PPGBL) governed by DoD 4500.34R.

B. Regulatory Flexibility Act

The proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the proposed rule, if implemented, will increase the liability of small entities for loss or damage to personal property shipments made by those entities under Intra-City and Intra-Area Direct Procurement Method (DPM) contracts. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the individual listed above. Comments are invited. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DAR Case 90-610 in all correspondence.

C. Paperwork Reduction Act

The proposed rule does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 247 and 252

Government procurement.

Linda E. Greene,

Deputy Director, Defense Acquisition, Regulatory System.

Therefore, it is proposed that 48 CFR parts 247 and 252 be amended as follows:

1. The authority citation for 48 CFR parts 247 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 247—TRANSPORTATION

2. Section 247.271–4(b)(9) is amended by removing "Liability" and adding "Contractor Liability for Loss and/or Damage".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.247–7110 is amended by revising the title of the section; the introductory paragraph is republished; the clause is amended by revising the title of the clause; by adding at the beginning of paragraph (a) of the clause the words "The term"; by redesignating paragraph (c) as (c)(3); by redesignating paragraphs (b) introductory text, (b) (i) and (ii) as paragraphs (c) introductory text and (c) (1) and (2) respectively; by adding new paragraph (b); in newly redesignated paragraph (c)(3) by removing "In" and adding "For shipments picked under Schedule I, Outbound Services, or delivered under Schedule II, Inbound Services, and in"; and by adding paragraph (d) to read as follows:

252.247–7110 Contractor Liability for Loss and/or Damage.

As prescribed at 247.271–4(b), insert the following clause:

Contractor Liability for Loss and/or Damage (_____)

* * * * *

(b) "Schedule" as referred to herein provides the level of service for which specific types of traffic apply as described in DoD 4500.34R, Personal Property Traffic Management Regulation.

* * * * *

(d) For shipments picked up or delivered under Schedule III, Intra-City and Intra-Area, and if notified of loss and/or damage within seventy-five (75) days following delivery, the Contractor agrees to indemnify the Government for loss of or damage to the owner's property for the full cost of satisfactory repair, or for the current replacement value of the article, up to a maximum liability of $1.25 per pound times the net weight of the shipment.

(End of clause)

[FR Doc. 90–8319 Filed 4–10–90; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90–03; Notice 02]

RIN 2127–AA27

Federal Motor Vehicle Safety Standards; Air Brake Systems; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This notice grants three requests to extend the period to submit written comments on an agency proposal to amend Standard No. 121, *Air Brake Systems*, to revise the requirements for performance of trailer pneumatic brake systems in the event of pneumatic system failure. The requests were made by the Heavy Duty Brake Manufacturers Council, Bendix Heavy Vehicle Systems, and the Truck Trailer Manufacturers Association. The comment closing date is changed from April 9, 1990, to August 7, 1990.

DATES: Comments on Docket 90–03, Notice 1, must be received by August 7, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Shadle, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. Telephone: (202) 366–5273.

SUPPLEMENTARY INFORMATION: On February 8, 1990, NHTSA published in the **Federal Register** (55 FR 4453) a notice of proposed rulemaking (NPRM) to amend Standard No. 121, *Air Brake Systems*, to revise the requirements for performance of trailer pneumatic brake systems in the event of pneumatic system failure. The proposal would require several safety features to reduce the consequences of pneumatic system failure, while deleting the requirement for a separate reservoir capable of releasing the parking brakes. Some of the proposed requirements would also provide safeguards against undesirable trade-offs resulting from the deletion of that reservoir. Among other things, the agency proposed to require a low pressure warning system that would indicate whether the pressure in any of the trailer's service brake reservoirs is below 60 p.s.i. The system would include a lamp located on the trailer. Some of the requirements for the lamps would be specified in Standard No. 121; the rest in Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*. The agency originally established a 60-day comment period.

NHTSA received three petitions requesting an extension of the comment period. The Heavy Duty Brake Manufacturers Council (HDBMC) requested a 120-day extension. The members of that organization include Abex Corporation, Bendix Heavy Vehicle Systems, MGM Brakes Division of Indian Head Industries, Midland Brake, Inc., and Rockwell International Corp. HDBMC stated that because of the complexity of the proposal, and after several weeks of studying the proposal and planning a response, its members realize a need to extend and complete both laboratory and vehicle tests and subsequently to analyze the results in order to file appropriate comments with the agency. HDBMC stated that this task cannot be accomplished by the current comment due date, and requested a 120-day extension to enable meaningful comments to be filed by HDBMC and its members.

Bendix Heavy Vehicle Systems, one of HDBMC's members, filed a separate petition requesting a 120-day extension. That company stated that the proposal is of major concern to the industry as it impacts areas of systems, complexity, antilock considerations, driving training, system maintenance and vehicle cost. Bendix stated that major changes of the type proposed by this rulemaking action need to be thoroughly evaluated so that all of the ramifications are known, and requested the extension to enable it and the industry to thoroughly evaluate and provide meaningful comments.

The third petition was submitted by the Truck Trailer Manufacturers Association (TTMA). That petitioner requested a 90-day extension to enable it to discuss the proposal at a May 5, 1990 meeting of its Engineering Committee and to coordinate its comments with its members and possibly with truck tractor manufacturers, operators, and suppliers of components.

After consideration of the three petitions, NHTSA has decided to extend the comment period by 120 days. The agency believes that the testing cited by HDBMC would provide useful information which NHTSA should have the opportunity to consider as part of this rulemaking. NHTSA also believes that an additional 120 days is a reasonable period of time to permit completion of the testing.

Since NHTSA has decided to extend the comment period by 120 days in light

of the testing cited by HDBMC, TTMA's request for a 90-day extension is fully accommodated. It is therefore not necessary for the agency to decide whether it would extend the comment period based solely or primarily on TTMA's desire to discuss the proposal at the May 5, 1990 meeting of its Engineering Committee. NHTSA observes that the May 5 meeting will provide a special opportunity for TTMA to coordinate its comments with its members and that the extension of the comment period will enable TTMA to take advantage of that opportunity.

Issued on April 4, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-8323 Filed 4-5-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB38

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Florida Salt Marsh Vole

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Florida salt marsh vole (*Microtus pennsylvanicus dukecampbelli*) to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. The vole is known only from one site in Levy County, Florida. The population level is very low, and the species could be extirpated by storm events. This proposal, if made final, would implement the protection of the Act for the Florida salt marsh vole. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by June 11, 1990. Public hearing requests must be received by May 29, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Supervisor, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Field Supervisor (see ADDRESSES section), (904/791-2580; FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

The Florida salt marsh vole (*Microtus pennsylvanicus dukecampbelli*) was described in 1982 (Woods et al. 1982) based on specimens from near Cedar Key, Levy County, Florida. It is a small (178-198 mm in total length), short-tailed rodent with a blunt head and short ears. The fur is black-brown dorsally and dark gray ventrally. The Florida salt marsh vole is related to the widespread meadow vole (*Microtus p. pennsylvanicus*). It differs from that subspecies in its larger size, darker coloration, relatively smaller ears, and certain skull characteristics. Most of the known information on the Florida salt marsh vole comes from Woods et al. (1982), who discovered the vole during seaside sparrow (*Ammodramus maritimus*) studies in west coast Florida marshes. The following background information is based on Woods et al. (1982).

The vole is known from only one site, where it occurs in a salt marsh with vegetation consisting of smooth cordgrass (*Spartina alterniflora*), black rush (*Juncus roemerianus*), and saltgrass (*Distichlis spicata*). The nearest existing population of *Microtus pennsylvanicus* to the salt marsh vole is located approximately 500 kilometers to the north in Georgia. However, fossil *Microtus pennsylvanicus* have been found in late Pleistocene deposits at four sites in Alachua, Citrus, and Levy Counties in Florida, indicating a much more extensive distribution in Florida in the past. The ages of these fossils may be from 8,000-30,000 years before the present. Lower sea levels in the past exposed large areas of coastal lands along Florida's west coast that are now submerged. About 10,000 years ago, sea levels may have been 25 meters lower than at present, exposing land as far as 100 kilometers west of the current shoreline. This coastal corridor is believed to have consisted of savanna and prairie vegetation that would have provided much more extensive meadow vole habitat than now exists. The Florida salt marsh vole is believed to represent a relictual population that has persisted at the Waccasassa Bay site after a long term reduction in range. Woods et al. (1982) concluded that the salt marsh vole existed in low numbers under harsh ecological conditions, and was vulnerable to natural storm events. This view is supported by the fact that, following a hurricane passing through the Waccasassa Bay area in 1985, only one salt marsh vole was taken during intensive trapping in 1987 and 1988 (Wood 1988).

Service involvement with the Florida salt marsh vole began with the inclusion of this species in category 2 of its vertebrate review notice published on September 1985 (50 FR 37958); the vole was retained in the same category in the Service's animal review notice published on January 6, 1989 (54 FR 554). Category 2 species are those for which the Service believes that listing may be appropriate, but for which additional biological data are necessary to support a proposed listing regulation. Additional search for this species was subsequently done under contract with the Service's Cooperative Fish and Wildlife Research Unit (Woods 1988) and by the Service's Jacksonville, Florida, Field Office (Bentzien 1989).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Florida salt marsh vole (*Microtus pennsylvanicus dukecampbelli*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Florida salt marsh vole is restricted to a single known site in the salt marsh of Waccasassa Bay, Levy County, Florida. Woods et al. (1982) were able to trap only 31 individuals; subsequent trapping efforts at the site located only one individual (Woods 1988). Trapping efforts for small rodents elsewhere in the coastal salt marshes of Citrus and Levy Counties has not yielded voles (Bentzien 1989). The Levy County population appears to represent a small remnant of a formerly wide-ranging population (Woods et al. 1982). The decline of the species appears natural, due to climatic changes and an associated rise in sea level. Prairie habitats, widespread on the much larger Pleistocene Florida peninsula, have become woodland unsuited to meadow voles.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms.* The Florida salt marsh vole is considered a species of special concern by the Florida Game and Fresh Water Fish Commission (chapter 39–27.05, Florida Administrative Code). This proposed rule would add habitat recovery and protection measures through sections 4 and 7 of the Endangered Species Act.

E. *Other natural or manmade factors affecting its continued existence.* The principal threat to the Florida salt marsh vole is loss of the single known population from storm events or from population fluctuations. In August 1985, Hurricane Elena remained stationary off the coast of Waccassassa Bay for 24 hours, and may have accounted for the decline of the Florida salt marsh vole observed between the 1981 and 1987 surveys. A single such storm event could easily extirpate the single known population of the vole. The population may currently be at such a low level that little genetic diversity remains. Woods *et al.* (1982) found little genetic variability in 14 speciments of the Florida salt marsh vole examined for alloenzymes.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaulation, the preferred action is to list the Florida salt marsh vole as an endangered species. The single known population is in danger of extinction in the foreseeable future, due to natural causes.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Florida salt marsh vole. This subspecies is known only from a single restricted site and currently exists in very small numbers. Publishing critical habitat maps in the **Federal Register** could increase the chance of illegal collection or attract trespass on the private land where the vole occurs. All involved parites and the landowner have been notified of the location and importance of protecting this species' habitat. Habitat protection will be addressed through the section 7 jeopardy standard. There would be no offsetting net benefit in designating critical habitat for this species therefore, it would not be prudent to do so.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified as 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a speciesd is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activites they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

No Federal involvement is currently known with regard to the Florida salt marsh vole. The area where is occurs is within the jurisdiction of the U.S Army Corps of Engineers (Corps) permitting program, pursuant to the Clear Water Act. Dredge and fill activities in this area would require a Corps permit. No development plans are known for the area, however.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, would, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involing endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing (See **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental

Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Bentzien, M.M. 1989. Florida salt marsh vole survey. Unpub. rep., U.S. Fish and Wildlife Service, Jacksonville, Florida. 5 pp.

Woods, C.A. 1988. Status surveys of the Florida saltmarsh vole. Rep. to U.S. Fish and Wildlife Service under Cooperative Agreement No. 14-16-0009-1544. 6 pp.

Woods, C.A., W. Post, and C.W. Kilpatrick. 1982. *Microtus pennsylvanicus* (Rodentia: Muridae) in Florida: a Pleistocene relict in a coastal saltmarsh. Bull. Florida St. Mus., Biol. Sci. 28(2):25:52.

Author

The primary authors of this proposed rule is Dr. Michael M. Bentzien (See **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless othewise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatended Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatend	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
MAMMALS:							
Vole, Florida salt marsh	*Microtus pennsylvanicus dukecampbelli.*	U.S.A. (FL)	Entire	E		NA	NA
*	*	*	*	*	*	*	

Dated: March 23, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-8244 Filed 4-10-90; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Extension of Comment Period on Proposed Threatened Status for the Northern Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period on the proposal to list the northern spotted owl (*Strix occidentalis caurina*) as a threatened species is extended. The extension will allow comments on this proposal to be submitted by all interested parties.

DATES: The comment period for this proposal was reopened on March 29 until April 11, 1990; it now closes on April 18, 1990. Comments must be received by the closing date. Comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Written comments and materials concering this proposal should be sent to the Spotted Owl Listing Coordinator, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E–1823, Sacramento, California 95825. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Kathleen E. Franzreb, Spotted Owl Listing Coordinator, U.S. Fish and Wildlife Service, at the above address (916/978–4351 or FTS 460–4351).

SUPPLEMENTARY INFORMATION:

Background

The northern spotted owl (*Strix occidentalis caurina*) is found from southwestern British Columbia through western Washington, western Oregon, and the coast range areas of northwestern California south to San Francisco Bay. A proposal of threatened status for the northern spotted owl was published in the Federal Register (54 FR 26666) on June 23, 1989. The comment period on the proposal originally closed on September 21, 1989, but was extended to December 20, 1989 (54 FR 38256) to permit analysis and submission of data on spotted owl investigations that were conducted during the spring and summer of 1989.

The Interagency Spotted Owl Scientific Committee (committee), endosred by Congress in its passage of section 318 of the 1990 Interior Appropriations Act, was established by the U.S. Forest Service, U.S. Fish and Wildlife Service, National Park Service, and Bureau of Land Management to prepare a conservation strategy for the northern spotted owl. As part of the development of this strategy, the committee assimilated and analyzed data and other information on the northern spotted owl to aid in the evaluation of possible management strategies. To accommodate submission of this plan and significant additional biological information pertaining to the status of the owl, the Service reopened the comment period on the proposal for 14 days from March 29 to April 11, 1990. The committee provided its report to its four sponsoring agencies on April 3, 1990. The reopened comment period is now extended until April 18, 1990 in order to allow additional opportunity to those who may wish to comment on the Service's proposed listing in light of the information and recommendations presented in the report. Written comments must be received by the Service at the Service office in the **ADDRESSES** section by the close of the comment period.

Author

This notice was prepared by Dr. Kathleen E. Franzreb, Spotted Owl Listing Coordinator, U.S. Fish and Wildlife Service, 2800 Cottage Way,

Room E–1823, Sacramento, California 95824.

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: April 6, 1990.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–8463 Filed 4–10–90; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 55, No. 70
Wednesday, April 11, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

List of Warehouses and Availability of List of Cancellations and/or Terminations

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Publication of List of Warehouses Licensed Under the U.S. Warehouse Act and Availability of List of Cancellations and/or Terminations Occurring During Calendar Year 1989.

Notice is hereby given that the Agricultural Stabilization and Conservation Service has published a list of warehouses licensed under the U.S. Warehouse Act (7 U.S.C. 241 *et seq.*) as of December 31, 1989, as required by section 26 of that Act (7 U.S.C. 266). Also available is a list of cancellations and/or terminations that occurred during calendar year 1989. A copy of the list of warehouses as of December 31, 1989, will be distributed to all licensed warehousemen. Other interested parties may obtain a copy of either list from: Mrs. Judy Fry, Agricultural Stabilization and Conservation Service, Licensing Authority Division, U.S. Department of Agriculture, P.O. Box 2415, Room 5962, South Agriculture Bldg., Washington, DC 20013, Telephone: 202–447–3822.

Dated: April 3, 1990.

Keith D. Bierke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 90–8378 Filed 4–10–90; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Layman Fire Recovery Project.

SUMMARY: In September 1989, the Layman Fire burned approximately 4590 acres of National Forest System Lands (NFSL) on the Plumas National Forest. The proposed recovery project consists of rehabilitation of NFSL damaged by the wildfire and the recovery of dead and dying timber which is still merchantable. Due to the length of time it has taken to develop an acceptable recovery program and to properly evaluate its effects, the time remaining for implementation has become critical. Any additional delay will result in unacceptable degradation of the physical and biological condition of NFSL and a further deterioration of the currently salvable timber.

Therefore, pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeals the decision for the Layman Fire Recovery Environmental Assessment (EA). The decision to rehabilitate Plumas NFSL and offer salvage timber for sale in the Layman Fire Recovery Analysis Area will not be subject to administrative appeal and review pursuant to 36 CFR part 217.

EFFECTIVE DATE: This decision will be effective April 11, 1990.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to the Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648, or to Ray Churchill, Plumas National Forest, P.O. Box 11500, Quincy, CA 95971, (916) 283–2050.

ADDITIONAL INFORMATION: The Layman Fire burned within the Jackson Creek, Cedar Creek, and Consignee Creek drainages causing severe damage to vegetation and watershed resources on over 2,800 acres of the 4,590 acre wildfire.

In September 1989, an emergency interdisciplinary rehabilitation team surveyed the burned area, in part to identify emergency and long-term rehabilitation needs. Emergency rehabilitation efforts undertaken in late 1989 were limited to treating only the most severely burned areas to reduce sediment movement and water quality degradation.

The Forest Supervisory has determined through an environmental analysis, which is documented in the Layman Fire Recovery EA, that there is good cause to expedite this project. The EA documents fire recovery and rehabilitation analysis on the entire 4590 acre Layman Fire area. The analysis included public scoping. The major recovery projects proposed for the analysis area include salvage of approximately 12 million board feet (MMBF) of fire-killed and severely damaged timber, reforestation of 1385 acres of suitable timberland, restoration of riparian vegetation, creation of fuelbreaks, fuels reduction, treatment of safety hazards, maintenance of emergency rehabilitation structures and habitat restoration and improvement for trout, deer and spotted owl. The project decision will be issued in later April 1990.

Analyses of the rate of deterioration of the dead and damaged timber and its related value indicate that most of the commercial value of the remaining currently salvable trees would be lost if proposed salvage activities are not implemented until 1991. Delays will also substantially increase the risk of severe forest insect and disease infestation of the already damaged trees. Furthermore, if reforestation is delayed an additional year, there will be a loss of $104,000 worth of seedlings which are in the nursery and scheduled for planting in 1991, because local seed origin requirements limit the use of the seedlings to reforest other areas. Finally, a significant portion of the National Forest receipts from the proposed salvage sales would be lost to various counties if the project is delayed and substantial timber deterioration reduces the value of the timber proposed for harvest.

Dated: April 5, 1990.

Joyce T. Muraoka,

Deputy Regional Forester.

[FR Doc. 90–8372 Filed 4–10–90; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Semiconductor Technical Advisory Committee; Closed Meeting

Federal Register citation of previous announcement: 55 FR 11416, March 28, 1990.

Previously announced date of meeting: April 19, 1990, room 1617–F, 9 a.m.

Changes in the meeting: April 17, 1990, the Herbert C. Hoover Building, room 4073, 9 a.m., 14th Street and Constitution Avenue NW., Washington, DC.

Dated: April 2, 1990.

Betty A. Ferrell,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 90–8411 Filed 4–10–90; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Application for an Amendment to an Export Trade Certification of Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88–A0016."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 88–00016, issued on February 3, 1989 (54 FR 6312, February 9, 1989).

Summary of the Application

Applicant: Wood Machinery Manufacturers of America, 1900 Arch Street, Philadelphia, Pennsylvania 19103.

Contact: John S. Satagaj, Esq., WMMA Legal Counsel, Telephone: (202) 639–8888.

Application No.: 88–A0016.

Date Deemed Submitted: March 29, 1990.

The Wood Machinery Manufacturers of America (WMMA) seks to amend its Certificate by adding the following companies as "Members" of the Certificae: American Machine Corp., Van Nuys, CA; Midwest Automation, Inc., Minneapolis, MN; Nolton Johnson Manufacturing, Inc., Bend, OR; and A.G. Raymond & Company, Inc., Raleigh, NC.

Dated: April 5, 1990.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 90–8338 Filed 4–10–90; 8:45 am]

BILLING CODE 3510–DR–M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of name change by a member of Export Trade Certificate of Review No. 88–00015.

On December 12, 1988, the Department of Commerce, with the concurrence of the Department of Justice, issued an Export Trade Certificate of Review to the Ferrous Scrap Export Association ("FSEA") (53 FR 51294, December 21, 1988). The Certificate of Review was amended on February 28, 1989 (54 FR 9542, March 7, 1989).

On October 30, 1989, the Witte-Chase Corporation, listed as a member covered by FSEA's Export Trade Certificate of Review, changed its name to Metro Metal Recycling Corp. All other aspects of FSEA's Certificate of Review remain unchanged.

Dated: April 5, 1990.

Douglas J. Aller,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 90–8339 Filed 4–10–90; 8:45 am]

BILLING CODE 3510–DR–M

Rotogravure Doctor Blade Steel Strip; Short-Supply Determination

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain rotogravure doctor blade steel strip.

Short-supply review number: 13.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a short-supply allowance for 54.4 metric tons of certain rotogravure doctor blade steel strip for 1990 under the U.S.-EC steel arrangement.

EFFECTIVE DATE: April 3, 1990.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377–0159.

SUPPLEMENTARY INFORMATION: On March 20, 1990, the Secretary received an adequate short-supply petition from Nedwick Steel Company ("Nedwick") requesting a short-supply allowance for 54.4 metric tons of this product under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products. Nedwick requested short supply because its customer for this product has been unable to obtain this material from U.S. producers and Nedwick's foreign supplier does not have regular export licenses to ship this product. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Pub. L. No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Regulations, published in the **Federal Register** on January 12, 1990, 55 FR 1348 ("Commerce's Short-Supply Regulations").

Rotogravure doctor blade steel strip is used in the production of doctor blades for rotogravue (color) printing

applications. These blades remove excess ink from printing cylinders. The material subject to this request meets the following specifications:

Chemistry (weight percentage nominal): Carbon 1.0, Silicon 0.25, Manganese 0.40, Phosphorus 0.015 max, Sulphur 0.004 max;

Width and tolerance: 5 inches ± 0.008 inch;

Thicknesses tolerances: 0.006 inch ± 0.000236 inch, and 0.008 inch ± 0.000315 inch;

Surface: bright fine polished, surface roughness Rmax <2.5 μmeter (m), Ra <0.25 μm;

Straightness: 0.024 inch/10 feet max;

Flatness and tolerances: extra accurate, with tolerances as follows:

Thickness inch	Unflatness across and lengthwise percentage of strip width
0.006	0.30
0.008	0.25

Tensile strength: 283 ± 7 KSI;

Hardness: 488 HV nom;

Edges: deburred;

Form of supply: coils;

Cleanliness: Groz Beckart cleanliness standard of maximum 700;

Camber: 0.012 inch/10 feet max.

ACTION: On March 20, 1990, the Secretary established an official record on this short-supply request (Case Number 13) in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address. Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) of Commerce's Short-Supply Regulations require the Secretary to apply a rebuttable presumption that a product is in short supply and to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that this material is not produced in the United States. Therefore, unless domestic steel producers provided proof that they could and would produce the requested quantity of this product within the desired period of time, provided it represented a normal order-to-delivery period, the Secretary would issue a short-suppiy allowance not later than April 4, 1990. On March 23, 1990, the Secretary published a notice of the **Federal Register** announcing a review of this request and providing domestic steel producers an opportunity to rebut the presumption of short supply. All comments were required to be received no later than March 30, 1990. No comments were received.

CONCLUSION: Since the Secretary received no comments to the **Federal Register** notice by potential suppliers to rebut the Secretary's presumption of short supply for the requested product, the Secretary hereby grants, pursuant to section 4(b)(4)(A) of the Act and § 357.102 of Commerce's Short-Supply Regulations, a short-supply allowance for 54.4 metric tons of the requested rotogravure doctor blade steel strip for 1990 under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products.

Dated: April 3, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-8337 Filed 4-10-90; 8:45 am]

BILLING CODE 3510-DS-M

COMMODITY FUTURES TRADING COMMISSION

Statutory Interpretation Concerning Certain Hybrid Instruments

AGENCY: Commodity Futures Trading Commission.

ACTION: Statutory interpretation.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is hereby reissuing an interpretation regarding certain hybrid instruments that combine characteristics of futures contracts or commodity options with debt, depository, or preferred equity interests as revised to conform to changes made in a related rulemaking.

EFFECTIVE DATE: April, 1990.

FOR FURTHER INFORMATION CONTACT: David R. Merrill, Deputy General Counsel, Office of the General Counsel, telephone (202) 254-9880; Betsey A. Kuhn, Senior Economist, or Tony Baptiste, Financial Analyst, Division of Economic Analysis, telephone (202) 254-6990; or Robert H. Rosenfeld, Attorney, Division of Trading and Markets, telephone (202) 254-8955, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 1989, the Commission published in the **Federal Register** a statutory interpretation recognizing a non-exclusive exclusion from regulation under the Commodity Exchange Act ("CEA or "Act") for categories of hybrid instruments meeting specified criteria.[1] In a companion release, the Commission proposed an exemptive rule for certain hybrid instruments with limited option components.[2] On July 17, 1989, the Commission adopted a final exemptive rule concerning certain hybrid option instruments.[3] In order to harmonize the treatment of hybrids in the exemptive rule and the Commission's statutory interpretation, certain conforming changes have been made to the previously published statutory interpretation. As revised, this interpretation supersedes the interpretation previously published at 54 FR 1139 (January 11, 1989).

Substantive Revisions

In adopting final exemptive rules concerning hybrid option instruments, in response to public comment the Commission broadened and clarified certain aspects of the rules as proposed.[4] The Commission has reviewed its previously published statutory interpretation concerning certain hybrid instruments in light of its recent adoption of changes to the final hybrid option rules and comments received concerning the interpretation itself. For the reasons stated in the Commission's **Federal Register** release concerning the final option hybrid rules, the Commission has adopted the following modifications in the statutory interpretation: (1) The class of eligible securities has been expanded to include preferred equity securities, as well as debt securities, within the meaning of section 2(1) of the Securities Act of 1933; (2) the category of eligible depository accounts has been expanded to include demand deposits and transaction accounts, as well as time deposits, within the meaning of 12 CFR 204.2 (b)(1), (e) and (c)(1), respectively, that are offered by certain qualifying financial institutions; and (3) the class of institutions eligible to market and sell such demand deposits, time deposits and transaction accounts has been expanded to include, in addition to financial institutions that are members of the Federal Deposit Insurance Corporation, financial institutions that

[1] 54 FR 1139 (January 11, 1989).

[2] 54 FR 1128 (January 11, 1989).

[3] 54 FR 30684 (July 21, 1989).

[4] *Id.*

are insured by a United States Government agency or a United States chartered corporation or United States branches or agencies of foreign banks that are licensed under the laws of the United States and regulated, supervised and examined by U.S. governmental authorities having regulatory responsibility for such institutions.

In addition, the Commission has clarified that non-transferable life insurance contracts, as well as annuities and pensions (whether or not derived from an employment relationship) that are indexed to a commodity or group of commodities are not subject to regulation under the CEA.

Clarification of Certain Issues

During the comment period, the Commission received requests for clarification as to the application of various aspects of the interpretation. In response to these comments, the Commission is providing the following clarification of the intended scope and application of the exclusionary criteria.

One-to-One-Indexing

The interpretation is limited to hybrid instruments indexed to a commodity on no greater than a one-to-one basis. A commenter suggested that the criterion should be applied to the aggregate commodity-dependent payments of the instrument through maturity rather than with respect to each periodic payment. The Commission has not altered its approach because a different approach would permit negative interest payments at times during the life of an instrument, a result at odds with characterization of the instrument as a hybrid, that is, an instrument predominantly structured as a debt, preferred stock or depository instrument, an essential predicate for exclusion under this interpretation.

Another commenter recommended that the one-to-one indexing requirement be broadened to include situations in which the percentage change in the amount of interest and principal payable on an instrument as a result of indexation to the value of a commodity does not exceed the percentage change in the value of the reference commodity. The Commission required that the one-to-one indexing criterion be applied to coupons and the principal independently to ensure that in each case indexing of the return satisfies the one-to-one indexing criterion. That is, if the instrument provides for the indexing of the coupon, the percentage change in the coupon may not exceed the percentage change in the underlying commodity. Each method of indexation must satisfy the one-to-one indexing criterion. This criterion is not unduly restrictive, however, because it permits an issuer to index both the principal and the coupon.

Finally, a commenter requested clarification of the application of the indexing criterion to price changes larger than 1% as well as for negative changes. The one-to-one indexing criterion applies to all percentage changes, not just 1% changes, and to both long and short embedded commodity instruments. That is, for a price increase of 5% in the reference commodity a zero to 5% decline could occur in the value of the indexed component.

Maximum Loss Limitation

The interpretation conditions exclusion upon compliance with specified limitations upon the maximum loss on the hybrid instrument. As a result, the issuer must receive full payment for the instrument upon its issuance and the purchaser or holder cannot be required to pay additional "out-of-pocket" funds or consideration during the life of the instrument or at maturity. A commenter noted that it is not uncommon that holders of debt instruments are required to pay additional amounts upon transfer or at maturity to cover fees, taxes or other charges that do not constitute consideration for the issuer. Another commenter requested clarification of the application of the criterion to instruments having a "deferred payment premium." Payments such as those to cover transfer fees or taxes at maturity would not violate the prohibition against payment of additional funds. Deferred payment option premiums are also permissible. However, any deferred payment option must be consistent with the requirement that no "out-of-pocket" funds are paid by the purchaser during the life of the instrument or at maturity related to the instrument's commodity-dependent payments. Notwithstanding the requirement that the issuer receive full payment for the instrument upon its issuance, a purchaser may margin the purchase of a hybrid instrument pursuant to applicable securities margin requirements promulgated by the Board of Governors of the Federal Reserve System.

Finally, one commenter questioned the applicability of the exclusion to instruments that do not provide for periodic interest payments, such as zero coupon debt securities, or instruments that do not provide for cash returns, such as securities that permit or require an issuer to issue additional securities in lieu of cash interest payments. The exclusion is not limited to instruments providing for periodic cash payments. Hybrid instruments in the form of zero coupon securities or instruments providing for other than cash returns (*e.g.*, interest paid by discount or premium) are eligible for the exclusion.

Commodity-Independent Yield

The interpretation also provides that excluded hybrid instruments must have a commodity-independent yield ("CIY") that is at least 50%, but no more than 150%, of the estiamted annual yield at the time of issuance for a comparable non-hybrid instrument. The yields on a comparable non-hybrid instrument will be the interest rate of a debt or depository instrument or the dividend yield on a preferred equity instrument. The comparable non-hybrid yield should have similar risk characteristics to the commodity-independent portion of the hybrid instrument. For example, the non-hybrid instrument to be compared should be issued by the same or a similar issuer and for a similar maturity. In this regard, some commenters have expressed confusion over the appropriate interest rate to use in comparing the commodity-independent yield of a hybrid instrument to the estimated annual yield for a comparable non-hybrid instrument where the two are not expressed in the same numeraire.[5]

In particular, a debt or depository instrument may carry an interest rate adjusted to reflect the expected appreciation or depreciation relative to the U.S. dollar of one or more [6] foreign currencies while the comparable non-hybrid instrument has an interest rate based soley upon the domestic United States market.[7] In such a case, direct

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[5] One commenter has suggested further that the Commission abandon the yield test and, instead, adopt a test based upon the implied net present value of the commodity-independent portion of the instrument. The Commission remains convinced that the yield test is preferrable. As clarified herein, however, the yield test should better address those issues which have been raised by its application to the particular instruments discussed above.

[6] The Commission notes that instruments have been proposed under the current interpretation which index their return, in part, to the appreciation or depreciation of a cross rate between two foreign currencies relative to the U.S. dollar.

[7] Of cousrse, the comparison between similar hybrid and non-hybrid preferred equity instruments the payments of which is stated in different numeraires may be more complex. Accordingly, although applicable to relative yields on hybrid and non-hybrid preferred equity instruments, the above analysis is stated primarily in terms of debt and depository instruments. In this regard, although the yield test should be applied to such instruments in a manner consistent with its application to debt or depository instruments denominated in different numeraires, the Commission will consider any additional factors regarding preferred equity instruments on a case-by-case basis.

comparison of the two interest rates might lead to the instrument failing the yield test, even though it offered a return comparable to the return on a similar domestic instrument. Alternatively, a hybrid instrument on other than a foreign currency that would fail the 50–150% yield test could be found to adhere to the test based upon payment in a foreign currency, unless adjusted for anticipated changes in the relative value of the currencies in which the yields are denominated.

Upon further consideration, and in light of concerns expressed by the Board of Governors of the Federal Reserve, ("Federal Reserve"), the Commission believes that these results, when applied to foreign-currency denominated hybrid instruments, may be inconsistent with the overall objective of the Federal Reserve to permit greater participation by United States citizens in such foreign currency denominated instruments.[8] Moreover, analyzing the instruments' yields on a dollar-adjusted basis is an unambiguous measure for comparing such returns, regardless of the currency, or currencies, in which they are denominated. Thus, the Commission is clarifying that any time the commodity dependent payments are denominated in, or indexed to, a foreign currency or currencies, the comparison to a comparable dollar-denominated non-hybrid rate should be on a dollar-equivalent basis.[9]

For example, in applying the yield test to a hybrid debt instrument indexed to the price of petroleum and denominated in yen, the commodity-independent yield should be adjusted by the annualized expected rate of appreciation or depreciation of the yen during the life of the instrument prior to its comparison to the straight interest rate for a comparable non-hybrid debt instrument.[10] Alternatively, when the principal amount of the instrument is in dollars and either the principal amount to be repaid at maturity or the interest on the principal or both, is in or indexed to yen then the commodity-independent yield should be compared on a dollar-equivalent basis to the yield offered on a comparable, non-hybrid dollar-denominated instrument.[11]

Certain commenters have suggested that foreign-currency-denominated hybrid instruments could fail the yield test as a consequence of the foreign interest rate regime prevailing at any particular time when compared to the comparable dollar-denominated non-hybrid rate. However, interest rates across sovereign boundaries tend to be closely aligned when adjusted for the relative appreciation or depreciation of the instrument's value as a numeraire. Accordingly, comparison of the rates offered on such hybrid instruments on a dollar-equivalent basis should result in such instruments meeting the yield test, when competitively priced.

The formula to adjust the CIY to a dollar-equivalent basis for a one-year instrument is:

$$\text{Adjusted CIY} = (1 + \text{CIY}) \times (\text{spot FX rate} / \text{future FX rate}) - 1.00$$

where:

CIY = the commodity-independent yield of the hybrid instrument;

Spot FX rate = the spot foreign exchange rate;

Future FX rate = the futures price of the foreign exchange rate with the same maturity as the hybrid instrument.[12]

For example, consider a hybrid instrument with the following characteristics[13]:

(1) The deposit amount is $1000;

(2) Interest of 3% per annum is paid in U.S. dollars on the deposit amount;

(3) The commodity-dependent portion of the hybrid is the dollar value of the deposit amount's yen appreciation with respect to dollars;

(4) The appropriate rate for a comparable non-hybrid instrument is 8.00%;

(5) Any downward adjustment to the deposit amount cannot exceed $1000;

(6) The instrument's commodity component is not severable.

(7) The term of the instrument is one year.

Based upon the above, the commodity-independent payment consists of a fixed interest payment of $30 and, at maturity, the deposit amount of $1000. If, for example, the yen price of dollars at issuance is 105 Yen per dollar then, the commodity-dependent payment may be represented in U.S. dollars as:

$$[\text{Yen } 105{,}000 * (\$/\text{Yen}_{\text{maturity}} - \$/\text{Yen}_{\text{initiation}})]$$

If the one year futures price of dollars in yen is 100 Yen per dollar, then the adjusted commodity-independent yield is:

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[8] In this regard, the Board of Governors of the Federal Reserve have taken action to permit United States citizens to hold and maintain domestically certain types of accounts in foreign currencies. *See*, 53 FR 52787 (December 29, 1988) and Letter to the CFTC from William W. Wiles, Secretary to the Federal Reserve Board, dated June 1, 1989, at 15–16.

[9] This approach is consistent with the Commission's treatment of swaps settled in foreign currencies in its Statement of Policy Concerning Swap Transactions. *See* 54 FR 30694, 30696 (July 21, 1989). *See also* footnote 29, *infra*.

On a related issue, one commenter requested that the Commission clarify the application of the criterion to inflation adjusted debt that is designed to afford investors a real rate of return in United States dollars. Hybrid instruments designed to afford a real rate of return are addressed specifically in footnote 29 of the reissued interpretation. As set forth therein, if the return on the hybrid instrument is designed to equal the estimated real rate of return by indexing part of its return to a broadly-based inflation measure, then the annual estimated yield of a comparable non-hybrid instrument would be the estimated real interest rate. In this regard, the Commission recognizes that such an inflation-adjusted interest rate instrument is equivalent to the expected return on a real interest rate basis. This is consistent with the Commission's recognition that comparison should be made between otherwise equivalent instruments.

[10] One commenter queried, in this regard, whether the straight debt rate should be the interest rate generally paid on comparable non-hybrid instruments offered in the foreign currency, rather than a United States dollar-based interest rate. Adjusting for the expected change in the value of the foreign currency should result in a similar value as comparing the foreign-currency denominated CIY in the hybrid instrument to the yields offered on comparable non-hybrid instruments denominated in that currency.

[11] In contrast, the following bank deposit is not a hybrid instrument. A customer deposits United States dollars and then exchanges the dollars for a foreign currency and earns interest in that currency. At maturity, the foreign currency deposit amount plus interest is again exchanged for United States dollars at the then spot rate. Rather, such a transaction is a foreign currency bank deposit accompanied by two spot transactions. To the extent such accounts consist of spot or cash transactions in the currencies and bank deposits, the Act and regulations thereunder do not apply and the transactions are outside of the Commission's jurisdiction. To the extent such accounts represent commodity bybrids, however, the Commission will apply the above tests.

[12] When a maturing futures contract is not available for direct comparison, the equivalent forward rate can be used. Of course, the actual comparison will be on an annualized basis and for other than one-year instruments appropriate adjustments due to maturity to the above formula should be made.

[13] The Commission's initial illustration of a hybrid instrument, 54 FR at 1141, referred to a bond whose face value is indexed to a foreign exchange rate. This revision supersedes that example.

Formula:

$$\text{Adjusted CIY}^{14} = (1.00 + \text{CIY}) * \frac{\text{(Spot FX rate)}}{\text{(Future FX rate)}} - 1.00$$

Example:

$$\text{Adjusted CIY} = .0815 = 1.03 * \frac{105.00}{100.00} - 1.00$$

The test value for the yield test is:

$$\frac{.0815}{.0800} = 1.02 \text{ or } 102\% \text{ which is greater than } 50\% \text{ and less than } 150\%.$$

Thus, the hybrid instrument passes the revised yield test for foreign-currency indexed hybrids. This same instrument would have failed the unadjusted yield test (*i.e.*, .03/.08=.375 or 37.5%).

Other commenters noted that, in addition to confusion concerning the appropriate measure of the commodity-independent yield for hybrids having different numeraires, the choice of the reference commodity and the time period during which an instrument is issued can cause one instrument to be in compliance with the yield test and another, which is in other respects similar, not to be in compliance. These commenters questioned whether the legality of an instrument or the scope of the Commission's jurisdiction should be affected by such transitory market conditions. However, hybrid instruments necessarily introduce temporal commodity pricing into debt, depository and preferred stock interests. Embedded commodity futures or option elements are reflected in the market price and yield of an instrument. The yield test reflects this concept by estimating the effect of a commodity element on the yield of the instrument as the deviation relative to the yield of a pure debt instrument of the same issuer. One commodity is not substitutable for another commodity and one time period is not the same as another. One commodity, such as gold, may be a carrying charge market (contango) while, another, such as coffee may be inverted (backwardation).[15] The choice of the reference commodity, therefore, affects the price of the instrument.

However, the fact that different commodities reflect different types of price behavior need not limit the design of hybrid instruments. Issuers are free to vary the reference price to account for the degree of backwardation or contango in a market. An obvious choice for a hybrid instrument with an embedded futures component is to use the forward or futures price for the commodity in lieu of the spot price. Since the expected value of the futures component is then equal to zero the hybrid instrument may be issued at the straight debt rate.

Several commenters contended that the commodity-independent yield criterion favors issuers with lower credit ratings. These commenters argued that since a less creditworthy issuer often must offer a higher interest rate on its debt securities in order to attract investors, such an issuer will have greater flexibility in establishing the terms of a hybrid offering (since the range between 50% and 150% of the yield on its "comparable" debt instruments will be broader). However, the yield test is stated in a proportional manner so that it will be applicable over widely varying periods of interest rate levels for the same issuer as well as for higher-credit-rated and lower-credit-rated issuers at a given moment in time.

A commenter also contended that the criterion favors longer maturities, since issuers generally will be better able to comply with the minimum and maximum commodity-independent yield restrictions by offering an instrument with a longer maturity. However, the fact that the criterion is stated in a per annum percentage tends to normalize for the effect of maturity more appropriately than some alternative approaches which would focus on the absolute dollar size of the embedded commodity component.

One commenter requested that the Commission clarify the application of the criterion to inflation-adjusted debt that is designed to provide investors a real rate of return. Hybrid instruments designed to provide a real rate of return are addressed specifically in footnote 29 of the reissued interpretation. As set forth therein, if the return on the hybrid instrument is equal to the estimated real rate of return the instrument would be excluded from the coverage of the Act and regulations.

Finally, several commenters requested that the Commission consider an

[14] For a hybrid instrument denominated in United States dollars with commodity-independent payments paid in United States dollars and commodity-dependent payments indexed to the change in a cross rate (the exchange rate between two currencies neither of which is the United States dollar) the CIY should be adjusted by the expected appreciation or depreciation of the cross rate multiplied by the spot price future price of United States dollars in the base currency divided by the future price of United States dollars in the base currency where the base currency is the denominator of the cross rate. For example, for a hybrid instrument denominated in United States dollars whose principal repayment is indexed to the Japanese yen/Canadian dollar cross rate, the base currency is Canadian dollars.

[15] One commenter suggested that the Commission revise the criterion to reflect any backwardation or contango effects. The specific proposal offered was to replace the yield test with a requirement that the hybrid instrument's yield be between 0 and 100% of the yield on a comparable non-indexed debt instrument plus or minus the extent to which the underlying commodity is in backwardation or contango. If one were to accept the logic of such a proposal, one should allow negative interest rates (*i.e.*, where contango is higher than the comparable non-indexed debt rate). Thus, the imposition of a zero limit does not naturally flow from the logic of the commenter's proposal and could require the same type of adjustment to the reference price which the same commenter found objectionable.

alternative yield test which would be met if the return paid or implied with respect to a given hybrid instrument reflected the market rate for forward sales or loans of the specific commodity. However, the current yield test permits the return paid or implied with respect to a given hybrid instrument to reflect the market rate for forward sales of the specific commodity. Consequently, there is no need for an alternative test.

At this time, the Commission has determined to retain the yield test, as originally promulgated, but will review this requirement as further experience is gained as to its impact upon contract design.

Accordingly, the Commission is reissuing the statutory interpretation, modified as discussed above, in the following form. Revisions to the interpretation as previously published have been bracketed for emphasis.

Reissuance of Interpretation

The Commodity Exchange Act ("Act") vests the Commission with jurisdiction over "transactions involving contracts of sale of a commodity for future delivery" [16] and "accounts, agreements (including any transaction which is of the character of, or is commonly known to trade as, an 'option' * * *) * * * ." 7 U.S.C. 2. Section 4(a) of the Act makes it "unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of * * * or otherwise deal[ ] in any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery" that is not made "on or subject to the rules of a board of trade which has been designated by the Commission as a 'contract market' for such commodity." 7 U.S.C. 6(a).[17] Section 4c of the Act generally permits the trading of commodity options only pursuant to regulations issued by the Commission and grants the Commission the authority to permit the offer and sale of commodity options without the requirement of exchange trading "under such terms and conditions as the Commission may prescribe." 7 U.S.C. 6c(b), 6c(c).[18]

The development of hybrid instruments that couple elements of futures contracts or commodity options with debt [,preferred equity] or depository obligations is a recent phenomenon. This development reflects commercial interest in offering instruments that are indexed to or have a return that is otherwise calculated by reference to the price of a commodity through transactions that take place other than on designated futures or option exchanges. The development of these hybrid instruments with commodity-related components has given rise to uncertainty concerning the treatment of such instruments by the Commission under the CEA and Commission regulations.[19]

In determining whether a transaction constitutes a futures or options contract, the Commission assesses the transaction as a whole with a critical eye toward its underlying purpose.[20] Through this interpretation, the Commission is stating its view that certain categories of hybrid instruments are not within the coverage of the Act and Commission regulations. The Commission's interpretation addresses those hybrid instruments that are debt [or preferred equity] securities within the meaning of section 2(1) of the Securities Act of 1933, or [demand deposits], time deposits [or transaction accounts] within the meaning of 12 CFR 204.2 [(b)(1), (c)(1) and (e)] offered by a [United States financial institution that is insured by a United States Government agency or United States chartered corporation, or by a United States branch or agency of a foreign bank that is licensed under the laws of the United States and regulated, supervised and examined by federal authorities having regulatory responsibility for such financial institutions,] and marketed and sold directly to a customer.[21] Treatment under this interpretation is limited to such hybrid instruments that are bona fide debt, [preferred equity] or depository instruments and that: (1) Are indexed to a commodity on no greater than a one-to-one basis; (2) limit the maximum loss on the instrument; (3) have a significant commodity-independent yield; [22] (4) do not have a commodity component that is severable from the debt, [preferred equity] or depository instrument; (5) do not call for delivery of a commodity by means of an instrument specified in the rules of a designated contract market; and (6) are not marketed as being or having the characteristics of a futures contract or commodity option.[23] These additional criteria are discussed below.

One-to-one Indexing. First, the instrument's commodity-dependent payments must be no greater than on a one-to-one basis. This means that for hybrid instruments offering a coupon or interest rate indexed to or calculated by reference to the price of a commodity, the percentage change in such coupon or interest rate for any payment period may not exceed the percentage change in the commodity price to which the coupon or interest payment is indexed. For hybrid instruments having a face value so indexed or calculated, the percentage change in the commodity-independent payment may not exceed the percentage change in the commodity price to which the face value is indexed, provided, however, that the commodity-independent payment must be adjusted for any repayments of the face value

[16] The Act provides that the term "future delivery" does not include any sale of any cash commodity for deferred shipment or delivery. 7 U.S.C. 2. This interpretation does not address the scope or content of that exclusion.

[17] This prohibition does not apply to contracts "made on or subject to the rules of a board of trade, exchange, or market located outside of the United States * * *." 7 U.S.C. 6(a).

[18] Section 4c(f) of the Act provides, however, that the Act shall not be deemed to govern or apply "to any transaction in an option on foreign currency traded *on* a national securities exchange." 7 U.S.C. 6c(f). (Emphasis added.)

[19] The Task Force on Off-Exchange Instruments, in letters dated September 30 and November 2, 1988, determined that it would not recommend the initiation of enforcement action under section 4c of the Act, 7 U.S.C. 6c (1982), based upon the issuance of notes by two different companies. *See also, e.g.*, CFTC Advisory No. 39–88, June 23, 1988 (Interpretative Letter No. 88–10); CFTC Advisory No. 45–88, July 19, 1988 (Interpretative Letter No. 88–11); CFTC Advisory No. 48–88, July 26, 1988 (Interpretative Letter No. 88–12); CFTC Advisory No. 63–88, September 21, 1988 (Interpretative Letter No. 88–14); and CFTC Advisory No. 66–88, September 28, 1988 (Interpretative Letter No. 88–15).

[20] *See, e.g., CFTC* v. *Co Petro Marketing Group, Inc.*, 680 F.2d 573, 581 (9th Cir. 1982) (transactions held to be futures contracts).

[21] Under this interpretation, instruments having returns indexed to or calculated on the basis of the price of a commodity that are not bona fide debt, [preferred equity] or depository instruments will not be viewed as hybrid instruments even though they incorporate some features common to securities or depository instruments.

[22] The term commodity-independent yield means the yield to maturity on the hybrid instrument due solely to commodity-independent payments. As used herein, the term commodity-independent payment means any payment pursuant to a hybrid instrument that does not result from indexing to or calculation by reference to the price of a commodity. In addition, as used herein, the term commodity-dependent payment means any payment pursuant to a hybrid instrument resulting from indexing to or calculation by reference to the price of a commodity.

[23] The approach contained in this interpretation is consistent with Commission and court precedent analyzing the characteristics of futures contracts and commodity options in other contexts. *See, e.g. Co Petro Marketing Group; Precious Metals Associates, Inc.* v. *CFTC*, 620 F.2d 900 (1st Cir. 1980); *CFTC* v. *Wellington Precious Metals, Inc.*, No. 85–3565–Civ–ATKINS (S.D. Fla. July 12, 1988); *CFTC* v. *American Metal Exchange Corp.*, 693 F. Supp. 168 (D.N.J. 1988) (appeal pending); *CFTC* v. *Trinity Metals Exchange*, No. 85–1482–CV–W–3 (W.D. Mo. Jan. 21, 1986); *CFTC* v. *U.S. Metals Depository Co.*, 468 F. Supp. 1149 (S.D.N.Y. 1979); *CFTC* v. *Morgan, Harris & Scott, Ltd.*, 484 F. Supp. 669 (S.D.N.Y. 1979); *In re First National Monetary Corp.*, [1984–86 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,698 (CFTC 1985); *In re Stovall*, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,941 (CFTC 1979).

prior to maturity. In the case of hybrid instruments having a face value and a coupon or interest so indexed or calculated, the percentage change in each of the commodity-dependent payments must meet the applicable requirements stated above. Under this test, for example, the change in the value of a commodity-independent payment which is indexed to the face amount of an instrument may not exceed the change in the value of an amount of the commodity whose value at the time of issuance equals the face amount of the instrument.[24]

Maximum loss limitation. Second, the maximum loss to the purchaser on the commodity-dependent component must be limited as described below. In the case of a hybrid instrument offering a coupon or interest indexed to or calculated by reference to the price of a commodity, the maximum loss on each coupon or interest payment may not exceed the commodity-dependent interest. In the case of a hybrid instrument with a face value so indexed or calculated, the maximum loss to the purchaser may not exceed the face value or purchase price of the instrument, whichever is greater. In the case of a hybrid instrument having both a coupon or interest and face value so indexed or calculated, the maximum loss may not exceed the respective limits stated above.[25] In any event, the issuer must receive full payment for the instrument upon its issuance,[26] and the provisions of the instrument cannot require the purchaser or any holder to pay additional "out-of-pocket" funds or consideration during the life of the instrument or at its maturity.

Commodity-independent yield. Third, in order to limit the commodity-dependent yield, the commodity-independent yield must equal at least 50 percent, but no more than 150 percent, of the estimated annual yield at the time of issuance for a comparable non-hybrid debt [preferred equity], or depository instrument issued by the same or similar issuer.[27] As a result of this requirement, for example, no more than half of the issue price of a hybrid coupon par value of long maturity would be attributable to the value of its commodity-dependent component.[28] In addition, the commodity-independent yield paid over the life of the instrument would be at least one half of what would be paid on a conventional debt [preferred equity], or depository instrument.[29]

Non-severable commodity component. This interpretation is not applicable to any instrument that would permit the commodity-dependent component to be traded separately.[30] For example, instruments in which the commodity-dependent component has a longer maturity than the commodity-independent component would not be covered by this interpretation.

Settlement retriction. In addition, this interpretation does not apply to hybrid instruments which settle by means of a delivery instrument, such as an exchange-approved warehouse receipt or shipping certificate, that is specified in the rules of a designated contract market. This limitation would not interfere with the ability of issuers to develop hybrid instruments with physical delivery alternatives to cash settlement, but provides some protection against interference with deliverable supplies for settlement of designated futures or option contracts.[31]

Marketing limitation. This interpretation also would not apply to hybrid instruments that are marketed as being or having the characteristics of a futures contract or a commodity option, except to the extent necessary to describe the operation of the instrument or to comply with applicable disclosure requirements. The Commission believes that this marketing limitation balances the need to prevent misleading characterizations of the nature of these instruments against the objective of assuring meaningful disclosure of their actual operation and risks.

Through this interpretation, the Commission is extending the type of analysis underlying the *de minimis* category suggested in its Advance Notice of Proposed Rulemaking (Regulation of Hybrid and Related Instruments) (Advance Notice), 52 FR 47022 (Dec. 11, 1987) to a broader class of commodity-related instruments.[32] As such, this interpretation continues the Commission's ongoing efforts to coordinate and harmonize its regulatory framework with those of other Federal regulators in a manner consistent with Congressional intent and the public interest.[33]

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[24] *See, e.g.*, CFTC Advisory No. 39-88, June 23, 1988 (Interpretative Letter No. 88-10, at p. 4), in which the Commission's Off-Exchange Task Force granted no-action relief with respect to proposed offerings of foreign currency-linked debt instruments, where, among other things, the instrument's face value was indexed to the yen on no more than a one-to-one basis. The no-action letter stated that these notes provided both an interest payment denominated in dollars and repayment of principal based on yen value "such that the Notes provide a fixed interest payment together with a principal return resembling, in many respects, a yen-denominated bond which, when converterd into dollars, reflects the prevailing exchange rate.

[25] [The maximum loss criterion applies on a payment-by-payment basis. Thus, the maximum loss for each commodity-dependent coupon may not exceed the maximum commodity-independent interest and the maximum loss for an instrument whose principal is indexed may not exceed the face value or purchase price, whichever is greater. The criterion is not applied on average over the life of the instrument since that could permit a negative individual payment, a structure that is inconsistent with the instrument being predominently a debt, preferred equity or depository instrument.]

[26] [The Commission intends that the issuer must receive full payment of the instrument's purchase price, excluding commissions and other selling costs. However, the instrument may be purchased on margin in accordance with applicable securities margin requirements.]

[27] Examples of the operation of the commodity-independent yield criterion and other elements of this statement are contained in the attachment to this interpretation. It should be noted that the commodity-independent yield criterion is to be applied at once, at the time when the terms of the offering, including price, are fixed.

[28] Application of this standard under the assumption of an interest rate of 10 percent means that coupon instruments issued at par with up to a one year maturity could have commodity components which account for approximately 5 percent of the issue price; such instruments with a maturity of five years could have commodity components which account for approximately 20 percent of the issue price; and such instruments with a maturity of ten years could have commodity components which account for approximately 30 percent of the issue price.

[29] For hybrid instruments designed to afford a real rate of return through indexing to the Consumer Price Index or other broadly based inflation measures, the estimted annual yield of a comparable non-hybrid instrument would be the estimated real rate of interest, calculated as the bond-equivalent yield of the most recently issued one-year Treasury bill less the most recently announced annualized percentage change in the Consumer Price Index.

[30] However, options on securities are excluded from Commission regulation. Section 2(a)(1)(B) of the CEA, 7 U.S.C. 2a.

[31] Such protection against interference with deliverable supplies is vital to the prevention of price manipulation on designated contract markets, which is central to the Commission's regulatory mission. *See* 7 U.S.C. 5, 7, 7a, 9, and 13(b).

[32] As discussed in the Advance Notice, the Commission is of the view that, in general, non-transferable [life insurance contracts,] annuities or pensions that are indexed to a commodity or group of commodities, as well as adjustable rate mortgages, employment agreements, leases and similar agreements, are beyond the purview of the CEA and Commission regulations. Further, the Commission is of the view that, in general, lending or deposit instruments in which the interest payments are measured by reference to published interest rates or indices of interest rates such as the prime rate, the London Interbank Offer Rate (LIBOR), and Treasury bill rates are beyond the purview of the Act and Commission regulations. Moreover, while this statutory interpretation does not expressly discuss loans offered by banks, the Commission believes that commercial loans, that is, bank loans directly to a commercial customer for the purpose of providing funds for use by the customer in its business (*see Board of Governors of the Federal Reserve System* v. *Dimension Financial Corp.*, 474 U.S. 361 (1985)) as well as loans to foreign governments, or political subdivisions thereof, would be beyond the purview of the CEA and Commission regulations.

[33] *See, e.g.*, Commission Regulation 1.17, 17 CFR 1.17 (1989) (Minimum financial requirements for

Continued

This interpretation is intended to clarify that hybrid instruments which provide a commodity-linked return and meet the criteria described above are, when viewed as a whole, more appropriately treated as debt securities, [preferred equity] or bank depository instruments rather than as commodity futures or commodity option contracts. Issuers of hybrid debt [and preferred equity] securities instruments would be subject to the Securities Act of 1933 and, as such, would be required either to comply with applicable registration requirements or to qualify for an exemption therefrom. Hybrid bank offerings would be subject to the requirements imposed on the offering bank by its Federal regulators.[34]

The Commission also will continue to consider relief on a case-by-case basis for instruments not addressed in this interpretation. [This interpretation is not intended to affect the validity of existing instruments offered pursuant to previous no-action positions but supersedes such prior no-action positions as to all other offerings.]

Issued in Washington, DC, on April 5, 1990 by the Commission.

Jean A. Webb,

Secretary of the Commission.

Attachment—Examples of Hybrid Instruments Meeting the Criteria of the Interpretative Statement

I. Introduction

Provided below are analyses of two hybrid instruments under the following criteria discussed in the interpretative statement: One-to-One Indexing, Maximum Loss, Commodity-Independent Yield, and Non-Severability. As discussed in that statement, any instrument which satisfied these criteria also must satisfy the interpretation's other criteria to be treated as excluded from the CFTC's jurisdiction. Section II of this attachment illustrates an instrument with its face value indexed to a foreign exchange rate while section III illustrates an instrument with its interest payment indexed to the price of gold.

II. Bond Whose Face Value Is Indexed to a Foreign Exchange Rate

[For example, consider a hybrid instrument with the following characteristics:[1]

(1) The deposit amount is $1,000;

(2) Interest of 3% per annum is paid in U.S. dollars on the deposit amount;

(3) The commodity dependent portion of the hybrid is the dollar value of the deposit amount's yen appreciation with respect to dollars;

(4) The appropriate rate for a comparable non-hybrid instrument is 8.00%.

(5) Any downward adjustment to the deposit amount cannot exceed $1000.

(6) The instrument's commodity component is not severable.

(7) The term of the instrument is one year.

Based upon the above, the commodity-independent payment consists of a fixed interest payment of $30 and, at maturity, the deposit amount of $1000. If, for example, the yen price of dollars at issuance is 105 Yen per dollar then, the commodity-dependent payment may be represented in U.S. dollars as:

[Yen 105,000* ($/Yen maturity—$/Yen initiation)]

Further, if the one year futures price of dollars in yen is 100 yen per dollar, then, the adjusted commodity-independent yield is equal to:

Formula:

$$\text{Adjusted CIY}^{2} = (1.00 + \text{CIY}) \frac{(\text{Spot FX rate})}{(\text{Future FX rate})} - 1.00$$

broker/dealer futures commission merchants); Commission Regulations 4.5, 17 CFR 4.5 (1989) (Exclusion from the definition of commodity pool operator for certain otherwise-regulated persons); Interim Report of the Working Group on Financial Markets (May 1988).

[34] The Commission has received correspondence from the staffs of the Securities and Exchange Commission ("SEC"), the Board of Governors of the Federal Reserve System, and the Office of the Comptroller of the Currency reviewing their respective regulatory frameworks as applicable in these areas and recognizing their oversight responsibilities with respect to hybrid instruments. *See* Letter from Richard G. Ketchum, Director, Division of Market Regulations, SEC, and Linda C. Quinn, Director, Division of Corporation Finance, SEC, to Marshall E. Hanbury, and Paula A. Tosini, Co-Chairmen, Task Force on Off-Exchange Instruments, CFTC, dated November 18, 1988; Letter from Michael Bradfield, General Counsel, Board of Governors of the Federal Reserve System to Robert J. Mackay, Chief of Staff, CFTC, dated November 21, 1988; Letter from J. Michael Shepherd, Senior Deputy Comptroller, Corporate and Economic Programs, Office of the Comptroller of the Currency, to Robert Mackay, Chief of Staff, CFTC, dated December 14, 1988.

[1] The Commission's initial illustration of a hybrid instrument, 54 FR at 1141, referred to a bond whose face value is indexed to a foreign exchange rate. This revision supersedes that example.

[2] For a hybrid instrument denominated in United States dollars with commodity-independent payments paid in United States dollars and commodity-dependent payments indexed to the change in a cross rate (the exchange rate between two currencies neither of which is the United States dollar) the CIY should be adjusted by the expected appreciation or depreciation of the cross rate multiplied by the spot price of United States dollars in the base currency divided by the future price of United States dollars in the base currency where the base currency is the denominator of the cross rate. For example, for a hybrid instrument denominated in United States dollars whose principal repayment is indexed to the Japanese yen/Canadian dollar cross rate, the base currency is Canadian dollars.

Example:

$$1.03 * \frac{105.00}{100.00} - 1.00 = .0815 = \text{Adjusted CIY}$$

The test value for the yield test is:

$$\frac{.0815}{.0800} = 1.02 \text{ or } 102\% \text{ which is greater than 50\% and less than 150\%.}$$

Thus, the hybrid instrument passes the revised yield test for foreign-currency indexed hybrids.]

One-to-One Indexing

The description of the instrument's commodity adjustment satisfies the one-to-one indexing criterion: A 1% change in the dollar-[yen] exchange rate changes the commodity-dependent payment by an amount equal to 1% of the $1000 face value. Assume that at maturity there is a 1% rise in the value of the [yen] vis-a-vis the dollar, *i.e.*, [105 yen=$.99]. As a result, the commodity-dependent payment at maturity equals the following:

[Yen 105,000×($.99/Yen−.01×$1000.00=$10] This $10 adjustment to face value, therefore, corresponds to a 1% change as a percentage of face value *i.e.*, $1000×.01=$10.

Maximum Loss

The description of the instrument also prohibits a loss greater than the face value. Essentially, a complete loss of the face value requires a change in the exchange rate such that the [Yen] declines to zero dollars. In this case, the commodity-dependent payment would be equal to −$1000. Therefore, the repayment at maturity is zero dollars because the $1000 return of face value is offset by the −$1000 commodity-dependent payment. Note that the instrument as constructed provides for a coupon payment of [$30], nonetheless.

Non-Severable Commodity Component

By its terms, the instrument examined cannot be severed into a separate commodity component and non-commodity component. It is important to recognize that, even though the analysis conceptually decomposes the instrument into component parts, the component parts cannot be decomposed subsequent to or at issuance.

III. Depository Instrument Whose Interest Payment is Indexed to the Price of Gold

The instrument to be examined in this example is as follows: (1) The deposited amount or face value is $1000, and the instrument is issued at par; (2) the interest yield is 8% per annum of the deposited amount or face value; [3] (3) the commodity-dependent interest payment is obtained by dividing the commodity-in-dependent interest payment by $500. This quantity is then multiplied by the difference between the spot price of gold at the time of the interest payment and $500, if the spot price of gold exceeds $500; otherwise, there is no adjustment; (4) the commodity-dependent payment cannot result in a loss that is more than the commodity-independent interest payment; (5) the commodity component and non-commodity component are not severable.

Based upon the above, the commodity-independent payment consists of a fixed interest payment of $80 and the face value of $1000 at maturity (*i.e.*, year end). For such a depository instrument, the commodity-dependent payment, which constitutes the embedded option-like component, may be represented as $80 multiplied by the differences between the spot price of gold at the time of the interest payment and $500 divided by $500, if the spot price of gold exceed $500. If the spot price of gold is less than or equal to $500, the commodity-dependent payment is equal to zero. Thus, the adjusted interest payment is: $80 + commodity-dependent payment, and the total payment at maturity is: $1000 + $80 commodity-dependent payment.

One-to-One

The instrument described above satisfies the one-to-one criterion because the indexing feature adjusts the commodity-dependent interest payment as a percentage of the commodity-independent interest payment by the same rate of change as that of the price of gold. That is, a 1% rise in the spot price of gold results in an $.80 commodity-dependent interest payment, which is 1% of the commodity-independent interest payment of $80. To illustrate, assume that the price of gold at issuance is $500. Suppose that by the interest payment date the spot price of gold increases by 1% to $505. As a result, the commodity-dependent interest payment is as follows:

$80×($505−$500)/$500=$.80.

This $.80 commodity-dependent payment corresponds to 1% of the commodity-independent interest payment, *i.e.*, $80×.01=$.80.

Maximum Loss

The description of the instrument prohibits a reduction in the interest payment. The adjustment formula only allows increases in payments based on changes in the price of gold since the commodity component is option-like. Accordingly, the description of the instrument states that an adjustment cannot reduce the fixed interest payment.

Commodity-Independent Yield

The instrument provides an 8% per annum interest payment. This fixed interest payment equals 80% of the assumed normal interest payment of 10%. As a result, the commodity-independent yield of the depository instrument is within the range of the 50% to 150% commodity-independent yield criterion.

Non-Severable Commodity Component

The instrument as defined, although examined conceptually by its constituent parts, cannot be severed subsequent to or at issuance.

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[3] The time to maturity is assumed to be one year with the interest paid at year end. In addition, the same or a similarly situated issuer of a one-year $1000 deposit is assumed to pay 10% per annum.

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 26–27 April 1990.

Time: 0800–1630.

Place: The Pentagon, Washington, DC.

Agency: The Army Science Board (ASB) Summer Study on Reduction of Operations and Support (O&S) Cost will meet for the purpose of briefings from FORSCOM installations. Subjects include: O&S impact on operational troops, program and budget funding, trends in O&S cost and measures to control O&S cost. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates off Meeting: 26–27 April 1990.

Time: 0880–1630 Hours.

Place: Warren, Michigan.

Agenda: The Army Science Board's Ad Hoc Subgroup on the M1 A2 Tank will meet to review and validate an Army Study for repowering the Abrams Tank. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90–8558 Filed 4–10–90; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection Contract Cost Principles and Procedures (FAR 31.205–2, Automatic Data Processing Equipment Leasing Costs).

ADDRESSES: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson, Office of Federal Acquisition Policy, (202) 523–3781 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* FAR part 31, Contract Cost Principles and Procedures, contains cost principles and procedures for (a) the pricing of contracts, subcontracts, and modifications to contracts and subcontracts whenever cost analysis is performed and (b) the determination, negotiation, or allowance of costs when required by a contract clause. However, certain cost elements that are reviewed pursuant to this part, require supporting documentation. One of these involves a justification of automatic data processing equipment leasing costs under FAR 31.205–2.

The information is used by the Contracting Officer to determine the allowability of a cost element.

B. *Annual reporting burden:* The annual reporting burden is estimated as follows: *Respondents,* 3,172; *responses per respondend,* 1; *total annual responses;* 3,172; *hours per response,* .5; *and total response burden hours,* 1,586.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0072, Contract Cost Principles and Procedures.

Dated: March 30, 1990.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 90–8342 Filed 4–10–90; 8:45 am]

BILLING CODE 6820–34–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Payments.

ADDRESSES: Send comments to MS. Eyvette Flynn, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson, Office of Federal Acquisition Policy, (202) 523–3781 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Firms performing under Federal contracts must provide adequate documentation to support requests for payment under these contracts. The documentation may range from a simple invoice to detailed cost data. The information is usually submitted once, at the end of the contract period or upon delivery of the supplies, but could be submitted more often depending on the payment schedule established under the contract.

The information is used to determine the proper amount of payments to federal contractors.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: *Respondents,* 80,000; *responses per respondent,* 120; *total annual responses,* 9,600,000; *hours per response,* .025; and *total response burden hours,* 240,000.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0070, Payments.

Dated: March 30, 1990.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 90–8343 Filed 4–10–90; 8:45 am]

BILLING CODE 6820–34–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Price Redetermination.

ADDRESSES: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson, Office of Federal Acquisition Policy, (202) 523–3781 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Fixed price contracts with prospective price redetermination provide for firm fixed prices for an initial period of the contract with prospective redetermination at stated times during performance. Fixed price contracts with retroactive price redetermination provide for a fixed ceiling price and retroactive price redetermination within the ceiling after completion of the contract. In order for the amounts of price adjustments to be determined, the firms performing under these contracts must provide information to the Government regarding their expenditures and anticipated costs.

The information is used to establish fair price adjustments to Federal contracts.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: *Respondents,* 3,500; *responses per respondent,* 2; *total annual responses,* 7,000; *hours per response,* 1; and *total response burden hours,* 7,000.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0071, Price Redetermination.

Dated: March 30, 1990.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 90–8344 Filed 4–10–90; 8:45 am]

BILLING CODE 6820–34–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Economic Price Adjustment.

ADDRESSES: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson, Office of Federal Acquisition Policy, (202) 523–3781 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon occurrence of specified contingencies. In order for the contracting officer to be aware of price changes, the firm must provide pertinent information to the Government.

The information is used to determine the proper amount of price adjustments required under the contract.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: *Respondents,* 7,200; *responses per respondent,* 1; *total annual responses,* 7,200; *hours per response,* .25; and *total response burden hours,* 1,800.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0068, Economic Price Adjustment.

Dated: March 30, 1990.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 90–8345 Filed 4–10–90; 8:45 am]

BILLING CODE 6820–34–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Indirect Cost Rates.

ADDRESSES: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson, Office of Federal Acquisition Policy, (202) 523–3781 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* The contractor's proposal of final indirect cost rates is necessary for the establishment of rates used to reimburse the contractor for the costs of performing under the contract. The supporting cost data are the cost accounting information normally prepared by organizations under sound

management and accounting practices. The contractor's execution of a Certificate of Current Cost or Pricing Data is required for defense contracts by Public Law 87–653 Truth in Negotiations Act (10 U.S.C. 2306(f)) and for nondefense contracts by Federal acquisition policy.

The proposal and supporting data is used by the contracting official and auditor to verify and analyze the indirect costs and to determine the final indirect cost rates or to prepare the government negotiating position if negotiation of the rates is required under the contract terms. The certificate is used as the basis for reducing cost reimbursements or negotiating subsequent contract price reduction if the contractor's submission of data is subsequently found to have been defective.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: *Respondents,* 9,800; *responses per respondent,* 1; *total annual responses,* 9800; *hours per response,* 1; and *total response burden hours,* 9800.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0069, Indirect Cost Rates.

Dated: March 30, 1990.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 90–8346 Filed 4–10–90; 8:45 am]

BILLING CODE 6820–34–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Advance Payments.

ADDRESSES: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson, Office of Federal Acquisition Policy, (202) 523–3781 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Advance payments may be authorized under federal contracts and subcontracts. Advance payments are the least preferred method of contract financing and require special determination by the agency head or designee. Specific financial information about the contractor is required before such payments can be authorized.

The information is used to determine if advance payments should be provided to the contractor.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: *Respondents,* 500; *responses per respondent,* 1; *total annual responses,* 500; *hours per response,* 1; and *total response burden hours,* 500.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone **(202) 523–4755. Please cite OMB Control No. 9000–0073, Advance Payments.**

Dated: March 30, 1990.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 90–8347 Filed 4–10–90; 8:45 am]

BILLING CODE 6820–34–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection Davis Bacon/ Contract Work Hours and Safety Standards Act (SF 1444).

ADDRESSES: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John L. O'Neill, Office of Federal Acquisition Policy, (202) 523–3856 or Mr Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* This regulation prescribes labor standards for Federally financed and assisted construction contracts subject to the Davis-Bacon and Related Acts (DBRA), as well as labor standards for nonconstruction contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA).

The recordkeeping requirements in this regulation, 48 CFR 1 (22.406), are a restatement of requirements cleared under OMB control numbers 1215–0140, 1215–0149, and 1215–0017 for 29 CFR 5.5(a)(i), 5.5(c), and 5.15 (records to be kept by employers under the Fair Labor Standards Act (FLSA) 29 CFR 516, which is the basic recordkeeping regulation for all the laws administered by the Wage and Hour Division of ESA).

48 CFR 1, (22.406–3) implements the recordkeeping and information collection requirements prescribed in 29 CFR 5.5(a)(1)(iii) cleared under OMB control number 1215–0140 (also prescribed in FAR and clause 22.406 under 9000–0089), by providing SF 1444 and Request for Authorization of Additional Classification and Rate, for the contractor and the Government to enter the recordkeeping and information collection data required by 29 CFR 5.5(a)(1)(ii) prior to transmitting the data to DOL.

This SF 1444 places no further burden on the contractor or the Government other than the information collection burdens already cleared by OMB for 29 CFR 5.

48 CFR 1 (22.406–7(b) and 22.406–8(d) prescribe the use of SF 1445 and SF 1446, respectively, for the Government to record the information obtained in the compliance checks (investigation interviews) prescribed in 29 CFR 5.6(a)(3).

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: *Total annual responses,* 1; and *total response burden hours,* 630.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No.

9000–0089, Davis-Bacon/Contract Work Hours and Safety Standard Act (SF 1444).

Dated: March 30, 1990.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 90–8348 Filed 4–10–90; 8:45 am]

BILLING CODE 6820–JC–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ID–2450–000, et al.]

Lewis S. Eaton et al.; Electric rate, Small power production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Lewis S. Eaton

[Docket No. ID–2450–000]

April 2, 1990.

Take notice that on March 23, 1990, Lewis S. Eaton (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Pacific Gas and Electric Company
Director, MGIC Investment Corporation
Director, Mortgage Guaranty Insurance Corporation

Comment date: April 17, 1990, in accordance with Standard paragraph E at the end of this notice.

2. Gulf States Utilities Company

[Docket No.ER90–286–000]

April 2, 1990.

Take notice that on March 27, 1990, Gulf States Utilities Company (Gulf States) tendered for filing a Notice of Cancellation of the Agreement For Wholesale Electric Service To Rural Electric Cooperatives entered into by Gulf States Utilities Company (Gulf States) and Cajun Electric Power Cooperative, Inc. (Cajun), dated as of September 1, 1980, and signed by Gulf States and Cajun, respectively, on June 18, 1980, and July 29, 1980 (Rate Schedule FERC No. 128), and the associated rate schedule thereunder, Rate schedule WSD—Wholesale Power at Distribution Voltage (Supplement No. 43 to Rate Schedule FERC No. 128). The cancellation is to be effective as of Midnight on June 30, 1990.

In its accompanying Statement of Reasons for Cancellation, Gulf states that proper notice of cancellation of the Agreement for Wholesale Electric Service has been given and that Cajun is no longer purchasing any service from Gulf States under the Agreement.

Copies of the filing were served on Cajun Electric Power Cooperative, Inc. and the Louisiana Public Service Commission.

Comment date: April 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Central Power and Light Company

[Docket No. ER90–289–000]

April 2, 1990.

Take notice that on March 28, 1990, Central Power and Light Company (CPL) tendered for filing proposed changes in rates applicable to five non-generated wholesale cooperative customers served under CPL's FERC Electric Tariff Original Volume No. 1 and proposed changes in rates applicable to two partial-requirements municipal customers, the Public Utilities Board of Brownsville, Texas and the City of Robstown, Texas. CPL has proposed a phased rate increase. The Level A rates, proposed to be effective 60 days after filing, would increase revenues from jurisdictional sales by $5,238,524, based on calendar year 1990. The Level B rates would increase revenues from jurisdictional sales by $22,503,643, based on calendar year 1990. CPL proposed that the Level B rates be made effective 61 days after filing but requests that such effective date of suspended to January 1, 1991.

CPL states that copies of its filing have been served on its customers affected by the filing and upon the Public Utility Commission of Texas.

Comment date: April 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER90–292–000]

April 3,1990.

Take notice that on March 30, 1990, Pacific Gas and Electric Company (PG&E) tendered for filing a rate settlement agreement with the Port of Oakland (Port), which changes certain rates in Rate Schedule FERC No. 95.

The rate settlement agreement (a) establishes as a component of the rate treatment for Port's full requirements service from PG&E cost recovery for PG&E's Diablo Canyon Nuclear Power Plant that is consistent with the California Public Utilities Commission (CPUC) 1988 Diablo Settlement (*see* CPUC Decision Nos. 88–12–083 and 89–03–062), and (b) provides negotiated rate increases for other components of the rate treatment for full requirements service to Port.

Consistent with the terms of the rate setlement agreement, PG&E has requested an effective date of January 1, 1990 for the agreement and the rates set forth therein.

Copies of this filing were served upon Port and the CPUC.

Comment date: April 18, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. American Electric Power Service Corporation

[Docket No. ER84–348–014]

April 3, 1990.

Take notice that on March 29, 1990, American Electric Power Service Corporation (AEP) tendered for filing its compliance report pursuant to the Commission's Letter Order dated February 14, 1990.

Comment date: April 18, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Gas and Electric Company

[Docket No. ER90–288–000]

April 3, 1990.

Take notice that on March 28, 1990, Pacific Gas and Electric Company (PG&E) tendered for filing, revised Rate Appendices to the Southern California Cities of Anaheim, Azusa, Banning, Colton and Riverside (Cities), Rate Schedule FERC Nos. 102, 103, 104, 105 and 106, respectively. The revisions are for gas rates and nuclear fuel cost used as inputs in calculating formula energy rates.

Copies of this filing have been served upon the Cities and the California Public Utilities Commission.

Comment date: April 18, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Central and South West Services Inc.

[Docket No. ER90–102–001]

April 3, 1990.

Take notice that on March 23, 1990, Central and South West Services, Inc., on behalf of the operating electric utility subsidiaries of Central and South West Corporation, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company, submitted for filing a revised Schedule K to the Operating Agreement among the CSW Operating Companies and Central and South West Services, Inc. The revised tariff sheet was filed in compliance with the Commission's Order Accepting In Part and Rejecting In Part Revisions To Operating Agreement, Noting Interventions, Granting Waiver, And

Rejecting Answer To Protest, issued in the above referenced proceeding on March 8, 1990.

Central and South West Services, Inc. states that the filing will be served upon all parties to Docket No. ER90-102-000, and on the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Arkansas Public Service Commission and the Louisiana Public Service Commission.

Comment date: April 18, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. EUA Power Corporation

[Docket No. ER90-291-000]

April 3, 1990.

Take notice that on March 29, 1990, EUA Power Corporation (EUA) tendered for filing a rate schedule for the sale of test power from the Seabrook nuclear unit to Montaup Electric Company (Montaup). The test power is priced at 90% of Montaup's avoided cost consistently with the provision in Article 3.3 of the Settlement Agreement dated December 27, 1985 in EUA Power Corporation, Docket No. EL85-46-000, that EUA Power may make sales of test power to Montaup when the sales are to Montaup's benefit.

Also filed was a revision to Montaup's fuel adjustment clause which will permit the benefit to Montaup from the purchase of test power from EUA Power to be passed through to Montaup's ratepayers.

The EUA Power rate schedule and Montaup fuel clause revisions are explained as follows:

1. EUA Power Corporation (EUA Power) has a 12.1324% ownership interest in the Seabrook No. 1 nuclear unit (the Unit), which is expected to commence test power generation within the next several days. Its affiliate Montaup Electric Company (Montaup) is the wholesale bulk power entity for the EUA system and is responsible for meeting all the requirements of its retail affiliates and for providing contract demand service to non-affiliates under its M-series rates.

2. EUA power intends to sell test power to non-affiliates under separate agreements which are not a part of this filing. It also intends to sell test power to Montaup in two situations. One is where Montaup is in a purchasing position. The other is where Montaup's incremental cost to generate is less than the cost of its opportunity to purchase from other suppliers and Montaup is not in a purchasing position.

3. The price to be paid by Montaup for EUA Power test power under the enclosed rate schedule is 90% of Montaup's Avoided Cost as defined in Article II of the rate schedule. When Montaup is in a purchasing position its Avoided Cost will reflect a competitively bid price of any short-term energy purchases that it would have made if that test power were not available. If Montaup is not in a purchasing position its Avoided Cost will reflect the difference between its incremental cost of generation with and without that test power. Regardless of whether Montaup is in a purchasing position or not the 10% discount below Avoided Cost insures that it will benefit from the purchase of test power from EUA Power as required by the EUA Power settlement.

4. Montaup's fuel adjustment clause contains a provision which by its terms prevents the determination of Montaup's fuel costs from reflecting any test power generated by Seabrook except to the extent that Seabrook CWIP is included in Montaup's rate base. The revision to the fuel clause will permit the benefit to Montaup from the purchase of Seabrook test power from EUA Power at 90% of avoided cost to be passed through to Montaup's M-rate ratepayers.

EUA Power requests waiver of the 60-day notice requirement to permit sales of test power to Montaup at least than Montaup's avoided cost to be made to the benefit of Montaup and Montaup's wholesale customers as of the time when Seabrook starts generating test power. In the alternative, EUA Power requests that the rate schedule and fuel clause revision to be made effective 60 days from today.

EUA Power asks that the rate schedule be terminated on the commercial operation date of Seabrook. The effectiveness of this rate schedule must terminate on that date under the provisions of the EUA Power settlement requiring the filing of contracts for the sale of post-commercial power and energy.

The amount of sales under the rate schedule depends on test generation at Seabrook and the amount that will be sold to nonaffiliates. The sales to Montaup cannot be projected with certainty but are expected to amount to 2% or less of Montaup's energy requirements.

Copies of this filing have been mailed to the Massachusetts Department of Public Utilities, the Rhode Island Division of Public Utilities and Common Carriers, the Attorney General Massachusetts and Rhode Island, and Montaup's M-rate customers.

Comment date: April 18, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8316 Filed 4-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2737-012, et al.]

Conoco Inc. et al.; Applications for Termination or Amendment of Certificates [1]

April 4, 1990.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 23, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,
Secretary.

Docket no. and date filed	Applicant	Purchaser and location	Description
G-2737-012D March 1, 1990	Conoco Inc., P.O. Box 2197, Houston, TX 77252.	Williams Natural Gas Company, West Panhandle Field, Carson County, Texas.	Assigned 1-1-90 to Redstone Operating, Inc.
G-20036-001D March 20, 1990	Exxon Corporation, P.O. Box 2180, Houston, TX 77252-2180.	Texas Gas Transmission Corporation, Calhoun Field, Ouachita Parish, Louisiana.	Assigned 11-1-88 to Waller Brothers, Inc.
CI62-792-000D March 26, 1990	Marathon Oil Company, P.O. Box 3128, Houston, TX 77253.	ANR Pipeline Company, Laverne Field, Harper County, Oklahoma.	Assigned 6-1-89 to Atlantic Richfield Company.
CI-68-1256-001D March 13, 1990.	Exxon Corporation	Arkla Energy Resources, a division of Arkla, Inc., Gilmer Field, Upshur County, Texas.	Assigned 8-1-89 to Peak Energy Corporation.
CI75-445-001D February 6, 1990	Enron Oil & Gas Company, 1400 Smith Street, Houston, TX 77001.	Natural Gas Pipeline Company of America, Evetts Field, Winkler and Loving Counties, Texas.	Assigned 1-1-89 to Exxon Corporation.
CI90-67-000 (CI70-987)D March 12, 1990.	Texaco Inc., P.O. Box 52332, Houston, TX 77052.	Texas Gas Transmission Corporation, South Marsh Island Block 11, Offshore Louisiana.	Assigned 3-1-89 to W&T Offshore, Inc. and GLG Energy, L.P.
CI90-68-000 (CI72-824)D March 12, 1990.	Texaco Inc.	Texas Gas Transmission Corporation, Ship Shoal Block 219, Offshore Louisiana.	Assigned 3-1-89 to W&T Offshore, Inc. and GLG Energy, L.P.
CI90-73-000 (CI767-)D March 19, 1990.	BHP Petroleum Company, Inc., 5847 San Felipe, Suite 3600, Houston, TX 77057.	El Paso Natural Gas Company, Various Wells, Eddy County, New Mexico.	Assigned 1-1-89 to OXY USA Inc.

FILING CODE: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

[FR Doc. 90-8313 Filed 4-10-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP90-1063-000 et al.]

Tennessee Gas Pipeline Co., et al.; Natural gas certificate filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Co.

[Docket No. CP90-1063-000]

April 2, 1990.

Take notice that on March 28, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90-1063-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Sea Robin Pipeline Company (Sea Robin), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that it was authorized by certificate issued September 13, 1978, in Docket No. CP77-594 (4 FERC ¶ 61,309) to transport up to 9,225 dekatherms of natural gas per day from the Eugene Island 338 Field, offshore Louisiana, through Tennessee's existing facilities to an existing subsea interconnection with the facilities of Sea Robin located in Eugene Island 330, offshore Louisiana. It is stated that the transportation service is presently being rendered under the terms of an August 5, 1977, gas transportation agreement between Tennessee Gas Pipeline Company, a Division of Tenneco Inc., and Sea Robin. Tennessee advises that it has succeeded to the rights and obligations of Tennessee Gas Pipeline Company, a Division of Tenneco Inc. It is further stated that the agreement is on file with the Commission as Tennessee's FERC Rate Schedue T-77.

Tennessee states that, by letter dated February 3, 1989, and in accordance with the terms of the agreement, Sea Robin has requested termination of the transportation service effective August 5, 1990. Further, Tennessee has agreed to terminate the agreement as of August 5, 1990.

Comment date: April 23, 1990 in accordance with Standard Paragraph F at the end of the notice.

2. Northern Natural Gas Co., CNG Transmission Corp.

[Docket No. CP90-1066-000; Docket No. CP90-1072-000]

April 2, 1990.

Take notice that Northern Natural Gas Company, Division of Enron Corp., 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, and CNG Transmission Corporation, 445 West Main Street, Clarksburg, West Virginia 26302-2450 (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued in Docket No. CP86-435-000 and CP86-311-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: May 17, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (agreement date)	Peak day [2] avg., annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related [3] docket serv.
CP90-1066-000 (3-29-90)	PSI Inc. (2-1-90)	255 191 93,075	TX	TX	2-1-90 FT-1	ST90-2124-000 (firm).
CP90-1072-000 (3-29-90)	Stand Energy Corporation (5-16-89).	2,000 [4] 82 29,930	B [5]	Corning [6]	2-15-90TI	ST90-2192-000 (interruptible).
Do	Entrade Corporation (11-15-89)	50,000 37,214 13,583,110	A [7]	Tenn.[8]	2-17-90 TI	ST90-2193-000 (interruptible).

[2] Quantities are shown in MMBtu unles otherwise indicated.
[3] If an ST docket is shown, 120-day transportation service was reported in it. The service type is also shown in this column.
[4] CNG's quantities are in dekatherms.
[5] Various receipt points in WV/PA/NY.
[6] CNG indicates delivery will be to Corning Natural Gas Corporation.
[7] Various interconnects between Tennessee Gas Pipeline Company and CNG.
[8] CNG indicates that deliveries will be to Tennessee Gas Pipeline Company.

3. Southern Natural Gas Co., Southern Natural Gas Co., Columbia Gas Transmission Corp., Columbia Gas Transmission Corp., El Paso Natural Gas Co.

[Docket No. CP90-1046-000,[1] Docket No. CP90-1047-000, Docket No. CP90-1048-000, Docket No. CP90-1049-000, Docket No. CP90-1052-000]

April 2, 1990.

Take notice that the above referenced companies (Applicants) filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: May 17, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Applicant	Shipper name	Peak Day[2] avg. annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related [3] dockets
CP90-1046-000 (3-26-90)	Southern Natural Gas Company.	International Paper Company.	40,000 40,000 14,600,000	Offshore TX, LA,	LA Offshore LA, TX, AL, MS.	2-1-90, IT	ST90-1874-000
CP90-1047-000 (3-26-90)	Southern Natural Gas Company.	International Paper Company.	10,000 10,000 3,650,000	AL, MS, LA, TX Offshore LA Offshore TX	AL	2-1-90, IT	ST90-1870-000
CP90-1048-000 (3-26-90)	Columbia Gas Transmission Corporation.	Entrade Corporation.	75,000 60,000 27,375,000	Various points of interconnections with Tennessee Gas P/L Company.	PA	2-17-90, ITS	ST90-1994-000
CP90-1049-000 (3-26-90)	Columbia Gas Transmission Corporation.	The Vandalia Company, Inc..	[4]1,000 800 365,000	Various Applachian meters on Columbia's pipeline system.	Existing Interconnections with Columbia's transmission system.	2-10-90, ITS	[5] ST90-2206-000
CP90-1052-000 (3-26-90)	El Paso Natural Gas Company.	Santa Fe Gas Marketing.	20,600 6,180 2,255,700	Any existing point of connection on El Paso's system.	Arizona	2-15-90, T-1	ST90-2196-000

[2] Quantities are shown in MMBtu unless otherwise indicated.
[3] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.
[4] Quantities are shown in MMBtu unless otherwise indicated.
[5] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day service was reported in it.

[1] These prior notices requests are not consolidated.

4. Pahandle Eastern Pipe Line Co.

[Docket No. CP90-1050-000]

April 3, 1990.

Take notice that on March 30, 1990, Panhandle Eastern Pipe Line Company (Panhandle), 5400 Westheimer Court, Houston, Texas 77056, filed in Docket No. CP90-1050-000, an application pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's regulations under the Natural Gas Act, 18 CFR part 157 (1989), to operate facilities, all as more fully set forth in the application which is on file with the Commission and open for the public inspection.[1]

Panhandle states that it has filed a Stipulation and Agreement (S&A) in its general rate case proceeding in Docket No. RP87-103-000. In that proceeding, Panhandle seeks to refunctionalize certain facilities from gathering plant to transmission plant. Panhandle states that it has reviewed the Commission's records of these facilities and that records of certification of some of these facilities could not be found. Panhandle further states that many of these facilities have been in continuous operation for 30 years or more and that all have been utilized by Panhandle in the performance of natural gas transportation and sales services for its customers.

Panhandle seeks confirmation that the facilities listed in the appendix are required by the public convenience and necessity and to the extent not previously certificated are authorized *nunc pro tunc* under section 7(c) of the Natural Gas Act.

Comment date: April 24, 1990, in accordance with Standard Paragraph F at the end of this notice.

Appendix

PANHANDLE EASTERN PIPE LINE COMPANY

Docket No. CP90-1050-000, facilities to be reclassified for which certificate requested

Description of facilities	Original cost	County	State
160200020001...	$39,596	Texas	OK
160200020019...	37,643	Texas	OK
160200020020...	148,398	Texas	OK
160200020021...	30,957	Texas	OK
160200020029...	6,390	Texas	OK
160200020031...	26,346	Texas	OK
160200020032...	17,914	Texas	OK

[1] On March 22, 1990, Panhandle filed an offer of settlement in Docket No. RP87-103-000 within which is contained Panhandle's request for certificate authorization. However, the certificate application fee required by § 381.207 of the regulations was not paid until March 30, 1990. § 381.103 of the Commission's regulations provides that the filing date is the date on which the appropriate fee is paid.

PANHANDLE EASTERN PIPE LINE COMPANY—Continued

Docket No. CP90-1050-000, facilities to be reclassified for which certificate requested

Description of facilities	Original cost	County	State
160200020033...	22,568	Texas	OK
160200020035...	16,792	Texas	OK
160200090001...	126,961	Texas	OK
160200090004...	161,863	Texas	OK
160200090005...	23,976	Texas	OK
160200100001...	125,973	Texas	OK
160200100003...	26,980	Texas	OK
160200100004...	37,495	Texas	OK
160200130001...	242,031	Texas	OK
160200140001...	143,956	Texas	OK
160200140002...	54,144	Texas	OK
160100010059...	220,916	Carson	TX
160200080001...	22,560	Beaver	OK
160200080002...	128,994	Beaver	OK
160200140003...	158,588	Cimarron	OK
160300270001...	114,126	Meade	KS
160300270002...	139,432	Meade	KS
160300270004...	22,863	Meade	KS
160300270006...	59,135	Meade	KS
160301240014...	81,763	Morton	KS
160301240003...	144,086	Morton	KS
160301250004...	59,057	Morton	KS
160301250006...	17,077	Morton	KS
160301250007...	15,179	Morton	KS
160301250008...	10,108	Morton	KS
160301260002...	341,168	Morton	KS
160301260003...	25,005	Morton	KS
160301260004...	10,076	Morton	KS
160301260005...	10,005	Morton	KS
160301260006...	14,415	Morton	KS
160301260007...	18,790	Morton	KS
160301270001...	27,472	Morton	KS
160301280001...	189,502	Morton	KS
160301290001...	49,839	Morton	KS
160301290002...	180,460	Morton	KS
160301290003...	16,608	Morton	KS
160301290004...	15,341	Morton	KS
160301290005...	44,676	Morton	KS
160301290006...	137,140	Morton	KS
160301290016...	13,747	Morton	KS
160301290027...	59,409	Morton	KS
160301290028...	153,865	Morton	KS
160300080001...	19,859	Seward	KS
160300080002...	72,617	Seward	KS
160300080003...	109,386	Seward	KS
160300080004...	32,357	Seward	KS
160300080005...	186,504	Seward	KS
160301220001...	65,094	Stevens	KS
160301230026...	1,067	Stevens	KS
160301250002...	320,930	Stevens	KS

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commmission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8314 Filed 4-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-1060-000, et al.]

Trunkline Gas Co., et al.; Natural Gas Certificate Filings

April 4, 1990.

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Co.

[Docket No. CP90–1060–000]

Take notice that on March 28, 1990, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP–1060–000 a request pursuant to section 7(b) of the Commission's Regulations for authorization to abandon firm transportation service provided for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that pursuant to Rate Schedule T–98 of its FERC Gas Tariff, Original Volume No. 2, Trunkline transported up to 2,000 Mcf of natural gas per day, on a firm basis for Southern until September 30, 1985; up to 1,000 Mcf per day from October 1, 1985 until September 30, 1987; and up to 500 Mcf per day thereafter. In accordance with the provisions of Article IV of their January 23, 1985 transportation agreement, Southern has provided Trunkline a written notice of its election to terminate upon expiration of the primary term of the Agreement effective January 23, 1990. Article IV of the Agreement states that the term of the transportation service is from the date of the agreement, January 23, 1985, for a primary term of four years and year to year thereafter, unless cancelled by either party giving one year prior written notice to the other.

Trunkline receives delivery from Southern at existing points of interconnection between Trunkline and Texas Eastern Transmission Corporation (Texas Eastern) in Allen and Beauregard Parishes, Louisiana. Trunkline will then transport and redeliver the gas to Southern at an existing point of interconnection in St. Mary Parish Louisiana. Trunkline states that Southern no longer requires Truckline's service to transport gas, and has requested that the agreement be terminated. No facilities are proposed to be abandoned.

Comment date: May 21, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gas Transmission Corp.

[Docket No. CP90–992–000]

The "Notice of Request Under Blanket Authorization" issued March 22, 1990, in Docket No. CP90–992–000 is being Re-Noticed to correct the filing date and thereby established a different 45 day intervention period.

Take notice that on March 29, 1990,[1] Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90–992–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Stand Energy Corporation (Shipper) under the blanket certificate issued in Docket No. CP86–240–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia states it proposes to transport up to 3,500 MMBtu of natural gas for Shipper on a peak day, 2,800 MMBtu on an average day and 1,277,500 MMBtu, annually under ITS Rate Schedule. This service was reported to the Commission in Docket No. ST90–2062–000. Columbia further states that construction of facilities will be required to provide and proposed service.

Comment date: May 21, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Lone Star Gas Co.,

[Docket No. CP90–1065–000]

Take notice that on March 29, 1990, Lone Star Gas Company, a Division of Enserch Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed a request with the Commission in Docket No. CP90–1065–000, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA), for authorization to construct and operate two sales taps and appurtenant facilities in Choctaw County, Oklahoma, under the blanket certificate issued in Docket No. CP83–59–000, pursuant to section 7 of the NGA, all as more fully set forth in the application which is open to public inspection.

Lone Star proposes to construct and operate two sales taps and appurtenant facilities to implement its direct natural gas sales to the Oklahoma National Guard (ONG) and the Red Ark Regional Development Authority (RARDA) in Cocktaw County. Lone Star would sell annually approximately 1,300 Mcf to the ONG and 10,871 Mcf to the RARDA. Lone Star states that it would charge its commercial rate for these sales, as approved by the Oklahoma Corporation Commission. Lone Star also states that these natural gas sales would not have any significant impact on its peak day or annual system operations.

Comment date: May 21, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. ANR Pipeline Co.

[Docket Nos. CP90–1068–000,[1] CP90–1069–000, CP90–1070–000, CP90–1071–000.

Take notice that on March 29, 1990, ANR Pipeline Company (Applicant) filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natual Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: May 21, 1990, in accordance with Standard Paragraph G at the end of this notice.

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[1] The request under blanket authorization was tendered for filing March 15, 1990, however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until March 29, 1990. Section 381.103 of the Commission's Rules provides that the filing date is the date on whichd the fee is paid.

[1] These prior notice requests are not consolidated.

Docket number (date filed)	Applicant	Shipper name	Peak day[1] avg. annual	Points of		Start up date rate schedule	Related[2] dockets
				Receipt	Delivery		
CP90-1068-000 (3-29-90)	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243.	Coastal Gas Marketing Co.	100,000 100,000 36,500,000	WY	WY	2-1-90-ITS	ST90-1985-000.
CP90-1069-000 (3-29-90)	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243.	Consolidated Fuel Corp.	15,000 15,000 5,475,000	LA, TX, KS, OK, Off TX, Off LA	MI	2-1-90-ITS	ST90-1984-000.
CP90-1070-000 (3-29-90)	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243.	Brooklyn Interstate Natural Gas Corp.	100,000 100,000 36,500,000	LA, OK, KS, TX, IL, WI, OH, MI, Off TX, Off LA	OH, MI, IL, IN, LA, WI	2-1-90-ITS	ST90-1988-000.
CP90-1071-000 (3-29-90)	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243.	Entrade Corp.	100,000 100,000 36,500,000	LA, TX, OK, KS, Off TX, Off LA	WI	2-1-90-ITS	ST90-2020-000.

[1] Quantities are shown in dekatherms unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.
[3] Quantities are shown in dekatherms unless otherwise indicated.
[4] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Lloxy Holdings, Inc., et al.

[Docket No. CI77-805-001, et al.]

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Comment date: April 23, 1990, in accordance with Standard Paragraph J at the end of this notice.

Docket No. and date filed	Applicant	Purchaser and location	Descroition
CI77-805-001 C 3-22-90	LLOXY Holdings, Inc., 909 Poydras St., P.O. Box 60350, New Orleans, LA 70160.	Texas Eastern Transmission Corp., West Cameron Block 620, Offshore LA.	Depth limitation deleted by a letter agreement dated April 14, 1989.
CI90-64-000 (CI85-429-000) B 3-6-90.	Maxus Exploration Co., 717 N. Harwood St., Suite 3100, Dallas, TX 75201-6505.	Trunkline Gas Co., Riceville Field, Vermilion Parish, LA.	Reserves depleted, wells plugged and abandoned.
CI90-69-000 (CI87-624) B 3-12-90.	OXY USA Inc., P.O. Box 300, Tulsa, OK 74102.	Texas Eastern Transmission Corp., West Cameron Block 459, Offshore LA.	Reserves depleted, well plugged and abandoned.
CI90-72-000 (CI76-499) B 3-19-90.	Conoco Inc., P.O. Box 2197, Houston, TX 77252.	Williams Natural Gas Co., East Niles Field, Canadian County, OK.	Wells plugged and abandoned and lease surrendered.
CI90-75-000 E 3-21-90	Samson Resources Co., Samson Plaza, Two West Second St., Tulsa, OK 74103.	Arkla Energy Resources, a division of Arkla, Inc., Arkoma Area, Latimer County, OK.	Acreage acquired 12-1-88 from West Timbers Limited Partnership, East Timbers Limited Partnership, North Timbers Limited Partnership and Cross Timbers Partners.
CI90-78-000 (CI65-525) F 3-27-90.	Oryx Energy Co., P.O. Box 2880, Dallas, TX 75221.	Natural Gas Pipeline Co. of America, Indian Basin Field, Eddy County, NM.	Acreage acquired 6-1-89 from BHP Petroleum Co. Inc.
CI90-79-000 E 3-29-90	TEX/CON Oil & Gas Co., 9401 Southwest Freeway, Houston, TX 77074.	Northern Natural Gas Co., Division of Enron Corp. Mocane-Laverne Field, Beaver County, OK.	Acreage acquired 6-6-88 and 10-7-88 from VVWF Oil, Inc.
CI90-80-000 E 3-29-90	TEX/CON Oil & Gas Co.	Northern Natural Gas Co., Division of Enron Corp. Mocane-Laverne Field, Beaver County, OK.	Acreage acquired 12-3-87 and 4c29-88 from VVWF Oil, Inc.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; d—Assignment of acreage; E—Succession; F—Partial Succession.

6. Gateway Pipeline Co.

[Docket No. CP89-471-001]

Take notice that on March 28, 1990, Gateway Pipeline Company (Gateway), 600 Travis Street, P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-471-001, an amendment pursuant to section 7(c) of the Natural Gas Act (NGA) to amend its previously filed, and currently pending, application in Docket No. CP89-471-000, for a certificate to construct and operate a natural gas pipeline and appurtenant facilities under the optional procedures contained therein, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Gateway states that it filed an application on December 22, 1988, requesting authorization to construct and operate a total of approximately 25.75 miles of 30 and 20-inch pipeline in Mobile County, Alabama. Gateway proposed to construct the pipeline in order to provide open-access transportation service for all potential shippers of Mobile Bay Area gas. Gateway states that the proposed pipeline would connect natural gas treatment plants in Mobile County, Alabama, with United Gas Pipe Line Company's existing Lirette, Louisiana to Mobile, Alabama, 30-inch pipeline at a point in Mobile County, Alabama. The estimated cost of the facilities was $20,413,000.

By this application, Gateway states it is requesting an amendment to its previous application in Docket No. CP89-471-000 to construct and operate an additional lateral line 2.19 miles in length connecting Gateway to the proposed Shell Offshore, Inc. sweetening plant. Gateway also requests authorization to construct and operate 0.10 mile of pipeline to connect

Gateway to the proposed Jubilee Pipeline Company sweetening plant. Gateway states that both laterals would be located in Mobile County, Alabama. Gateway also requests authorization for changes to the original route resulting from environmental and right-of-way considerations. The total estimated cost of the proposed facilities as amended would be $21,467,000, which would be financed with cash on hand.

Comment date: April 25, 1990 in accordance with Standard Paragraph F at the end of the notice.

7. Panhandle Eastern Pipe Line Co., Southwest Gas Storage Company.

[Docket No. CP90-1014-000]

Take notice that on March 20, 1990, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, and Pan Gas Storage Company, d.b.a. Southwest Gas Storage Company (Southwest), P.O Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-1014-000, a joint application under sections 7(b) and 7(c) of the Commission's Regulations under the Natural Gas Act for a blanket certificate of convenience and necessity authorizing Southwest to establish firm and interruptible open-access storage services, and authorizing Panhandle to lease cushion gas to Southwest to enable it to perform said storage, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southwest proposes to offer new firm and interruptible open-access storage services pursuant to Rate Schedule FSS and Rate Schedule ISS, respectively. Southwest indicates that specifically, it requests blanket authority with pre-granted abandonment to make firm and interruptible storage agreements on a nondiscriminatory basis to all buyers, and the authority to charge rates between the stated maximum and minimum rates requested in the rate schedules.

Southwest further proposes that the Commission grant, pursuant to section 7(b) of the Natural Gas Act, approval to reduce its currently existing certificated obligation to Panhandle by 1,000,00 Mcf to 34,000,000 Mcf and pre-granted abandonment for open-access storage services contemplated upon expiration of the terms of the individual FSS and ISS service agreements.

Panhandle indicates that it seeks certifcate authority to lease cushion gas which is necessary for Southwest to perform its proposed open-access storage services.

Panhandle and Southwest indicate that no new facilities are proposed to be constructed in this application.

Comment date: April 25, 1990 in accordance with Standard Paragraph F at the end of this notice.

8. El Paso Natural Gas Co. and Equitrans, Inc.

[Docket Nos. CP90-1061-000 and CP90-1062-000]

Take notice that the above referenced companies (Applicants) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is summarized in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 25, 1990 in accordance with Standard Paragraph F at the end of this notice.

Docket Number (date filed)	Applicant	Shipper	Peak day [2] average annual	Points of receipt	Points of delivery	Start up date (rate schedule)	Related [3] dockets
CP90-1061-000 (3-28-90)	El Paso Natural Gas Co., P.O. Box 1492, El Paso, Texas 79978.	EnTrade Corp.	103,000 103,000 37,595,000	System-wide.	NM, OK, TX.	3-04-90 (T-1).	CP88-433-000. ST90-2275-000.
CP90-1062-000 (3-28-90)	Equitrans, Inc., 4955 Steubenville Pike, Pittsburg, PA 10505.	Angerman Associates, Inc..	392 Mcf 300 Mcf O54,750 Mcf	WV	PA	2-09-90 (ITS).	CP86-553-000. ST90-1980-000.

[2] Quantities are shown in MMBtu unless otherwise indicated.
[3] The CP Docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

9. ANR Pipeline Co.,

[Docket No. CP90-1079-000, CP90-1080-000, CP90-1081-000, and CP90-1082-000]

Take notice that on March 30, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in the respective dockets prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by ANR and is summarized in the attached appendix.

ANR states that each of the proposed services would be provided under an executed transportation agreement, and that ANR would charge the rates and abide by the terms and conditions of the

[1] These prior notice requests are not consolidated.

[1] These prior notice requests are not consolidated.

referenced transportation rate schedules.

Comment date: May 21, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket number	Shipper name	Peak day [2] avg, annual	Points of Receipt	Points of Delivery	Start-up date rate schedule	Related [3] dockets
CP90-1079-000	Tarpon Gas Marketing, Ltd	150,000 150,000 54,750,000	LA, OK, KS, TX, WI, MI	OH, MI, WI, IL, IN, KY	2-3-90, ITS.	ST90-2141.
CP90-1080-000	Coastal Gas Marketing Co	300,000 300,000 109,500,000	LA, OK, KS, TX, MI	IN	2-1-90, ITS.	ST90-2022.
CP90-1081-000	Phibro Distributors Corp.	250,000 250,000 91,250,000	LA, OK, KS, TX	OH, IL, IN, KY	2-2-90, ITS.	ST90-2143.
CP90-1082-000	Kaztex Energy Management, Inc.	1,734 1,734 632,910	LA	WI	2-1-90, ITS.	ST90-2018.

[2] Quantities are shown in dt equivalent.
[3] ANR reported its 120-day transportation service in the referenced ST dockets.

10. Williston Basin Interstate Pipeline Co.; Southern Natural Gas Co.; and Northwest Pipeline Corp.

[Docket Nos. CP90-1085-000,[1] CP90-1086-000, and CP90-1087-000, and CP90-1088-000; CP-1089-000; CP90-1090-000]

Take notice that on March 30, 1990, Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: May 21, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket Number (date filed)	Applicant	Shipper name	Peak day[2] Avg, Annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related[3] dockets
CP90-1085-000 (3-30-90)	Williston Basin Interstate, Pipeline Co., Suite 200, 304 East Rosser Ave., Bismarck, ND.	Amerada Hess Corp.	550 524 191,260	ND	ND	2-9-90, IT-1.	CP89-1118-000. ST90-1973-000.
CP90-1086-000 (3-30-90)	Williston Basin Interstate, Pipeline Co., Suite 200, 304 East Rosser Ave., Bismarck, ND.	ARCO Natural Gas Marketing Inc.	10,000 10,000 3,650,000	WY	WY, ND	2-23-90, IT-1.	CP89-1118-000. ST90-2254-000.
CP90-1087-000 (3-30-90)	Williston Basin Interstate, Pipeline Co., Suite 200, 304 East Rosser Ave., Bismarck, ND.	Marathon Oil Co.	1,020 1,020 372,300	WY	MT, ND, WY	2-15-90, IT-1.	CP89-1118-000. ST90-1974-000.
CP90-1088-000 (3-30-90)	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202-2563.	Direct Gas Supply Corp.	1,000 1,000 365,000	AL, LA, MS, OF. LA, OF. TX, TX	GA, SC	2-6-90, IT ...	CP88-316-000. ST90-1873-000.
CP90-1089-000 (3-30-90)	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202-2563..	Brooklyn Interstate Natural Gas Corp.	80,000 40,000 14,600,000	AL, LA, MS, OF. LA, OF. TX, TX	GA	2-2-90, IT ...	CP88-316-000. ST90-1876-000.
CP90-1090-000 (3-30-90)	Northwest Pipeline Corp., P.O. Box 58900, Salt Lake City, Utah 84158-0900.	Kimball Energy Corp.	5,000 4,600 1,680,000	CO	CO	3-1-90, TF-1.	CP86-578-000. ST90-2334-000.

[2] Quantities are shown in Dekatherms unless otherwise indicated.
[3] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.
[4] Quantities are shown in MMBtu unless otherwise indicated.
[5] The CF docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should, on or before the comment date, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of

the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should, on or before the comment date, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8315 Filed 4-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-48-003]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

April 4, 1990.

Take notice that ANR Pipeline Company ("ANR"), on March 30, 1990, tendered for filing as part of its F.E.R.C. Gas Tariff, Original Volume No. 1, the following tariff sheet to be effective May 1, 1990.

Fourth Revised Sheet No. 80A

ANR states that the purpose of this filing is to revise its purchased gas adjustment clause to allow for D-1 and D-2 demand deferrals to be collected and/or returned through separate surcharge components, rather than including such amounts in the commodity surcharge.

ANR states that copies of the filing were served upon all of its jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § § 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before April 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8308 Filed 4-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-7-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 4, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on March 30, 1990, pursuant to section 4 of the Natural Gas Act, part 154 and § 2.104 of the Commission's regulations, the terms and conditions of the Stipulation and Agreement approved by the Commission in Docket No. RP88-217, *et al.* by order issued October 6, 1989, and Section 12.10 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Eighteenth Revised Sheet No. 31
Ninth Revised Sheet No. 32
Third Revised Sheet No. 39

The filing is proposed to become effective on May 1, 1990.

The purpose of this filing is to make a minor change in the "Fixed Monthly Surcharge" and the "Take-or-Pay Commodity Surcharge," two rates currently in effect to facilitate CNG's collection of direct take-or-pay costs. The change would update the interest rate applied to take-or-pay principal amounts to reflect the FERC's current interest rate.

CNG also seeks waiver of the refund provisions of Section 12.10 of the General Terms and Conditions of its tariff. This section requires CNG to credit customer invoices for any amounts overcollected in the previous year. CNG would prefer and seeks permission to refund any overcollections by simply reducing next year's surcharge.

Copies of the filing were served upon CNG's customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211). All motions or protests should be filed on or before April 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8309 Filed 4-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA90-1-25-000, TM90-5-25-000]

Mississippi River Transmission Corp.; Proposed Change in FERC Gas Tariff

April 4, 1990.

Take notice that on March 30, 1990, Mississippi River Transmission Corporation (MRT) tendered for filing an original and six (6) copies of the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1.

	Proposed effective date
Original Sheet No. 4A.6	April 1, 1990.
Tenth Revised Sheet No. 73	April 1, 1990.
Fourteenth Revised Sheet No. 74	April 1, 1990.
Forty-Fourth Revised Sheet No. 4	June 1, 1990.
Third Revised Sheet No. 4.1	June 1, 1990.
Third Revised Sheet No. 4.2	June 1, 1990.
Seventeenth Revised Sheet No. 4A.	June 1, 1990.
Eighth Revised Sheet No. 4A.1	June 1, 1990.
Eighth Revised Sheet No. 4A.2	June 1, 1990.
Fifth Revised Sheet No. 4A.3	June 1, 1990.
Fifth Revised Sheet No. 4A.4	June 1, 1990.
Fourth Revised Sheet No. 4A.5	June 1, 1990.

MRT states that the instant filing reflects MRT's annual purchased gas cost adjustment (PGA), submitted pursuant to Commission Regulations and Paragraph 17 of MRT's FERC Gas Tariff, and revised fixed take-or-pay charges incurred from pipeline suppliers. The overall cost impact of the PGA on MRT's jurisdictional customers is a decrease of approximately $.3 million for the subject three month period. Specifically, the impact of the instant filing on MRT's Rate Schedule CD-1 rates is a decrease of 37.3 cents per MMBtu in the Demand Charge D-1 component, and a decrease of 10.84 cents per MMBtu in the commodity charge. The single part rate under Rate Schedule SGS-1 reflects a decrease of 10.99 cents per MMBtu.

MRT states that pursuant to Commission orders in prior MRT filings concerning the flowthrough of monthly fixed take-or-pay charges billed to MRT by United Gas Pipe Line Company (United), Natural Gas Pipeline Company of America, (NGPL) and Trunkline Gas Company (Trunkline), MRT is required to revise its own take-or-pay flowthrough filings to track any changes in the fixed take-or-pay charges billed to MRT. Consequently, included in the instant filing are tariff sheets which reflect revised fixed take-or-pay charges applicable to each of MRT's jurisdictional customers. Such tariff sheets also reflect a reconciliation of take-or-pay amounts actually paid to United, NGP, and Trunkline by MRT compared to take-or-pay amounts collected by MRT from its jurisdictional customers. MRT states that the cost impact of all revisions to take-or-pay charges reflected herein on MRT's jurisdictional customers is an increase of approximately $41,685 for the quarter.

MRT states that on March 8, 1990, and as amended on March 23, 1990, United filed with the Commission at Docket No. RP90-91-000 to recover the jurisdictional portion of increased take-or-pay charges incurred by United. Based on United's filings, MRT claims that it will be billed in Docket No. RP90-91-000 $202,209 per month for eighteen (18) months commencing April 1, 1990. MRT has included Original Sheet No. 4A.6 which reflects MRT's flow-through of the jurisdictional portion of the fixed take-or-pay charges which MRT will be billed by United in Docket No. RP90-91. Tenth Revised Sheet No. 73 and Fourteenth Revised Sheet No. 74 have been revised to include references to United's Docket No. RP90-91 filing, and inclusion of Original Sheet No. 4A.6 in MRT's tariff.

MRT requests waiver of the notice requirements of § 154.22 of the Commission's regulations to allow Original Sheet No. 4A.6, Tenth Revised Sheet No. 73 and Fourteenth Revised Sheet No. 74 to become effective on April 1, 1990, to correspond with the same effective date requested by United in their March 8 and 23, 1990, filings.

Pursuant to § 154.67 of the Commission's Regulations, MRT states that it also filed on March 30, 1990 its "Motion to Make Effective Suspended Tariff Sheets" in Docket No. RP89-248. The base tariff rates contained in the instant filing, and certain allocations and billing determinants used in computing the PGA, are predicted on the tariff sheets contained in MRT's motion filing.

MRT states that a copy of this filing has been served on all of MRT's jurisdictional sales customers and the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 24, 1990, in Docket No. TA90-1-25-000 and on or before April 11, 1990, in Docket No. TM90-5-25-000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8300 Filed 4-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-97-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 4, 1990.

Take notice that Northern Natural Gas Company, Division of Enron Corp., (Northern) on March 30, 1990, tendered for filing proposed changes to its FERC Gas Tariff. Northern has requested a waiver of the Commission's regulations so that the proposed filing becomes effective on February 1, 1990 and March 1, 1990.

Northern states that this filing is being submitted to reduce the net take-or-pay surcharge by crediting take-or-pay revenues collected in Northern's sales rates through January 31, 1990. This "true-up" filing is a function of the settlement of Northern's rate proceeding at Docket Nos. RP88-259 and RP89-136.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Stret, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests must be filed on or before April 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8305 Filed 4-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-12-28-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

April 4, 1990.

Take notice that on March 30, 1990 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 3-C.19
First Revised Sheet No. 3-C.20
First Revised Sheet No. 3-C.21

The proposed effective date of these revised tariff sheets is May 1, 1990.

Panhandle states that the revised tariff sheets filed herewith reflect revisions to the Order No. 500 take-or-pay direct billing amounts approved by Commission Orders dated April 28, 1989 and October 10, 1989 in Docket Nos. RP89-125-000, *et al.*, and January 10, 1990 in Docket Nos. TM90-10-28-000 and TM90-11-28-000. Specifically, Panhandle states that the revised tariff sheets reflect the first annual adjustment to carrying charges and monthly TOP Fixed Surcharges in accordance with section 24 of Panhandle's FERC Gas Tariff, Original Volume No. 1.

Copies of this letter and enclosures are being served on all affected jurisdictional sales customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Panhandle's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8310 Filed 4-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA90-1-55-000, TM90-5-55-000]

Questar Pipeline Co.; Rate Change

April 4, 1990.

Take notice that on March 30, 1990, Questar Pipeline Company tendered for filing and acceptance certain revised tariff sheets to its FERC Gas Tariff as follows:

Tariff sheet	Proposed effective date
Original Volume No. 1	
Fourth Revised Sheet No. 12	May 1, 1990.
Fifth Revised Sheet No. 12	June 1, 1990.

Questar Pipeline states that the purpose of this filing is to (1) adjust the pipeline supplier charge to recover revised buyout and buydown costs charged to Questar Pipeline by its former pipeline supplier, Northwest Pipeline Corporation effective May 1, 1990 and (2) adjust the purchased gas cost under its sale-for resale Rate Schedule CD-1 effective June 1, 1990.

Questar Pipeline states that Fourth Revised Sheet No. 12 reflects a change to its pipeline supplier charges of $1,437 from $487,115 to $188,566. The new charge has been allocated between Questar Pipeline's CD-1 zones on the basis of MDQ.

Questar Pipeline further states that Fifth Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $2.75034/Dth which is $0.18844 higher than the currently effective rate of $2.56190/Dth. The demand base cost of purchased gas as adjusted is increased by $0.00060/Dth from $0.00541/Dth to $0.00601/Dth. The surcharge adjustment is increased to $.15207/Dth, effective June 1, 1990.

Questar Pipeline states that it has provided a copy of the filing to Mountain Fuel and interested state public service commissions.

Any person desiring to be heard or to protect this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before April 24, 1990 in Docket No. TA90-1-55-000 and on or before April 11, 1990 in Docket No. TM90-5-55-000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8301 Filed 4-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-100-000]

Sea Robin Pipeline Co.; Proposed Changes to FERC Gas Tariff

April 4, 1990.

Take notice that on March 30, 1990, Southern Deepwater Pipeline Company ("Southern Deepwater") on behalf of Sea Robin Pipeline Company ("Sea Robin") tendered for filing the following tariff sheet as part of Sea Robin's FERC Gas Tariff, Original Volume No. 1:

Third Substitute Original Sheet No. 4-D

Southern Deepwater states that this filing is made in order for Sea Robin to implement, on a contingent basis, a take-or-pay recovery mechanism consistent with the Commission's Order No. 500. Southern Deepwater assets that this filing is necessitated by the confluence of two events: (1) The imminent expiration of Sea Robin's sales contracts with its two jurisdictional sales customers, Southern Natural Gas Compnay ("Southern") and United Gas Pipe Line Company ("United") and (2) the uncertainty surrounding the effectiveness of the allocation methodology employed in the original filing in this docket arising out of the judicial challenge to purchase deficiency methodology in *Associated Gas Distributors* v. *FERC*, 893 F.2d 349 (D.C. Cir. 1989) (hereinafter "AGD II").

Southern Deepwater has requested that the tariff sheet become effective only in the event that the Commission ultimately rescinds, following the final disposition on appeal of *AGD II*, the effectiveness of Second Substitute Original Sheet No. 4-D, which was previously filed in the underlying docket utilizing a purchase deficiency allocation methodology.

The proposed tariff sheet reflects Sea Robin's absorption of fifty percent (50%) of its buy-out and buy-down costs which Sea Robin has either actually paid or has become obligated to pay on or before March 30, 1990 and reflects direct billing of the remaining fifty percent (50%) of the buy-out and buy-down costs to its jurisdictional sales customers, Southern and United. The proposed tariff sheet allocates cost responsibility between the two customers on the basis of an equitable sharing methodology

(*i.e.*, 50/50 sharing by the two sales customers).

Copies of the filing will be served upon all of Sea Robin's jurisdictional sales customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (§§ 385.211 and 385.214). All such motions or protests should be filed on or before April 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are also available at Southern Deepwater's offices in Birmingham, Alabama and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8306 Filed 4-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-8-003]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

April 4, 1990.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on March 30, 1990 certain revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff. The proposed effective date of the revised tariff sheets is April 10, 1990.

The purpose of the instant filing is to place into effect on April 10, 1990, upon the conclusion of the suspension period in this proceeding, the rates filed herein on October 10, 1989, as adjusted (1) to comply with Ordering Paragraph (E) of the Commission's Order of November 9, 1989 in this proceeding by eliminating the costs associated with facilities not in service as of February 29, 1990, (2) to reflect intervening tracking filings—subsequent to the October 10, 1989 filing in this docket and (3) to reflect the proposed Rate Schedules FT-MB and IT-MB, for firm and interruptible transportation service on the Mobile Bay pipeline system as part of Transco's FT and IT rate schedule.

Transco states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties. In accordance with provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before April 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Louis D. Cashell,

Secretary.

[FR Doc. 90-8307 Filed 4-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-98-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

April 4, 1990.

Take notice that on March 30, 1990, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff, which tariff sheets are listed in the filing. Transcontinental states that the proposed effective date for the revised tariff sheets is May 1, 1990.

Transco states that the purpose of the instant filing is to calculate the Producer Settlement Payment (PSP) charges for the third Annual Recovery Period (Year 3) as provided in Section 34 and 36 of the General Terms and Conditions of Transco's FERC Gas Tariff, Second Revised Volume No. 1. Such PSP charges are proposed to be collected over the annual period May 1, 1990 through April 30, 1991.

Transco further states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions should be filed on or before April 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Louis D. Cashell,

Secretary.

[FR Doc. 90-8302 Filed 4-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-99-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

April 4, 1990.

Take notice that on March 30, 1990, Transcontinental Gas Pipe Line Corporation, (Transco) tendered for filing of certain revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff, which tariff sheets are listed in the filing. Transco states that the proposed effective date of the revised tariff sheets is May 1, 1990.

Transco states that the purpose of the instant tariff filing is to implement the partial recovery of approximately $49.9 million if Litigant Producer Settlement Payments (LPSP), pursuant to sections 35 and 37 of the General Terms and Conditions of Transco's FERC Gas Tariff, Second Revised Volume No. 1. The LPSP costs are proposed to be recovered over a one-year amortization period begining May 1, 1990 through April 30, 1991.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers, State commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 amd 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8303 Filed 4-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-4-7-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 4, 1990.

Take notice that on March 30, 1990, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1:

Ninety-fourth Revised Sheet No. 4A
Fifth Revised Sheet No. 4B.1
Fifth Revised Sheet No. 4B.2
Fifth Revised Sheet No. 4B.3
First Revised Sheet No. 4B.4
First Revised Sheet No. 4B.5
First Revised Sheet No. 4B.6
Thirteenth Revised Sheet No. 4J
Sixth Revised Sheet No. 45P

Southern states that the above-referenced tariff sheets are being filed with a proposed effective date of May 1, 1990, in compliance with the requirements of the Stipulation and Agreement approved by Commission order of March 23, 1989 in Docket Nos. RP83-58-000, *et al.*

Southern states that this filing reflects adjustments to its fixed take-or-pay surcharge in order to reconcile projected interest recovered during the past twelve-month period with Commission prescribed interest rates in effect during that period, and to adjust the projected interest for the twelve-month period commencing May 1, 1990 to conform to the currently effective Commission interest rate. The proposed tariff sheets also reflect a revised volumetric take-or-pay surcharge of 7.687¢ per MMBtu, resulting from the reconciliation of projected interest collected during the preceding twelve-month period with Commission prescribed interest rates in effect during that period, and the recomputation of the surcharge to reflect an interest projection consistent with the currently effective Commission prescribed interest rate.

Copies of Southern's filing were served upon all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure §§ 385.214, 385.211). All such motions or protests should be filed on or before April 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8311 Filed 4-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-6-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

Take notice that on March 30, 1990 Trunkline Gas Company (Trunkline) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 3-A.9
First Revised Sheet No. 3-A.10

The proposed effective date of these revised tariff sheets is May 1, 1990.

Trunkline states that the revised tariff sheets filed herewith reflect revisions to the Order No. 500 take-or-pay direct billing amounts approved by Commission Order dated April 28, 1989 in Docket No. RP89-129-000. Specifically, Trunkline states that the revised tariff sheets reflect the first annual adjustment to carrying charges and monthly TOP Fixed Surcharges in accordance with section 21 of Trunkline's FERC Gas Tariff, Original Volume No. 1.

Copies of this letter and enclosures are being served on all affected jurisdictional sales customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Trunkline's filing are no file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8312 Filed 4-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-3-49-000]

Williston Basin Interstate Pipeline Co.; Purchased Gas Cost Adjustment Filing

April 4, 1990.

Take notice that on March 30, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1
Third Revised Twentieth Revised Sheet No. 10
Original Volume No. 1-A
Third Revised Fifteenth Revised Sheet No. 11
Twenty-Second Revised Sheet No. 12
Eleventh Revised Sheet No. 97A
Original Volume No. 1-B
Third Revised Ninth Revised Sheet No. 10
Third Revised Ninth Revised Sheet No. 11
Original Volume No. 2
Second Revised Twenty-Second Revised Sheet No. 10
Seventeenth Revised Sheet No. 11B

The proposed effective date of the tariff sheets is May 1, 1990.

Williston Basin states that Third Revised Twentieth Revised Sheet No. 10 (First Revised Volume No. 1) and Second Revised Twenty-Second Revised Sheet No. 10 (Original Volume No. 2) effectuate a 2.208 cents per dkt increase in the Current Gas Cost Adjustment applicable to Rate Schedules G-1, SGS-1, E-1 and X-1 as compared to that contained in the Company's December 29, 1989 filing in Docket No. TQ90-2-49-000, effective February 1, 1990.

Williston Basin has also submitted Third Revised Fifteenth Revised Sheet No. 11 and Twenty-Second Revised Sheet No. 12 (Original Volume No. 1-A) and Second Revised Twenty-Second Revised Sheet No. 10 and Seventeenth Revised Sheet No. 11B (Original Volume No. 2), to reflect a revised Fuel Used, Lost and Unaccounted For gas percentage applicable to certain transportation rate schedules.

Certain of the tariff sheets submitted in the instant filing reflect an increase of 0.501 cents per dkt in fuel reimbursement charge component of the Company's relevant transportation rates as compared to that contained in the Company's December 29, 1989 filing in Docket No. TQ90-2-49-000, effective

February 1, 1990. Such increase in the fuel reimbursement charge is a result of the change in Williston Basin's average cost of purchased gas the fuel reimbursement percentage reflected in the instant filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8304 Filed 4-10-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. CAC-005]

Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver From Test Procedures for Central Air Conditioners and Central Air Conditioning Heat Pumps for Carrier Corporation

AGENCY: Department of Energy.

ACTION: Notice of decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. CAC-005) granting Carrier Corporation a waiver for its HydroTech 2000 model series heat pumps with integrated domestic water heating from existing Department of Energy (DOE) test procedures for determining the model's Annual Operating Cost.

FOR FURTHER INFORMATION CONTACT:

Douglass S. Abramson, U.S. Department of Energy, Office of Conseration and Renewable Energy, Forrestal Building, Mail Station, CE-132, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station, GC-12, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. Carrier Corporation has been granted a waiver for its HydroTech 2000 model series central air conditioner (heat pump) permitting the company to use an alternate test method in determining the total Annual Operating Cost.

Issued in Washignton, DC, March 29, 1990.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

DECISION AND ORDER

In the Matter of: Carrier Corporation (Case No. CAC-005)

Background

The Energy conservation Program for Consumer Products (other than automobiles), established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Applicance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including central air conditioners and central air conditioning heat pumps and domestic water heaters. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. DOE further amended the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986. The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of a waiver.

Carrier Corporation, (Carrier) filed both an "Application for Interim Waiver" and a "Petition for Waiver" dated May 30, 1989. DOE published in the **Federal Register** the denial of the Interim Waiver and Carrier's petition, soliciting comments, data and information respecting the petition. 54 FR 32373, August 7, 1989.

Comments were received concerning both the "Petition for Waiver" and the "Interim Waiver." DOE consulted with the National Institute of Standards and Technology (NIST) and the Federal Trade Commission (FTC) concerning the Carrier petition. NIST submitted an evaluation of the waiver test procedure and comments in a letter report to DOE dated December 19, 1989. The FTC voiced no opposition to the issuance of the waiver to Carrier.

Assertions and Determinations

Carrier's petition sought a waiver from the DOE test provisions for central air conditioners and central air conditioning heat pumps for its HydroTech 2000 model heat pump. Carrier requested this relief because, in addition to providing space heating and cooling, the HydroTech 2000 also provides domestic water heating. The HydroTech 2000 is a central air conditioning heat pump which is fitted with additional controls and hardware to allow the waste heat from the cooling or heating modes to heat the water in the water heater, similar to a desuperheater. However, the HydroTech 2000 can also perform water heating even when heating or cooling are not required. This feature is extremely useful when integrated with an electric water heater. The heat pump is capable of raising the incoming water from approximately 55°F to 90-105°F. By reducing the burden on the electric water heater there is a potential for substantial energy savings.

Carrier claimed that while the HydroTech 2000 is capable of being tested in accordance with the DOE central air conditioner test procedure for Seasonal Energy Efficiency Ratio (SEER) and Heating Seasonal Performance Factor (HSPF), the test procedure does not give a true representation of the energy consumption of the HydroTech 2000 heat pump. Carrier requested in both the Interim Waiver and the Petition for Waiver the allowance to test and

rate the HydroTech 2000 with an equivalent SEER and an equivalent HSPF. This "equivalent" rating would have credited the unit's energy consumption for calculating SEER and HSPF with the energy saved by using the HydroTech 2000 for water heating. The test procedure proposed by Carrier was based on the Department's test procedure for central air conditioning heat pumps.

The Department denied the Interim Waiver because it believed that the solution proposed by Carrier, crediting the energy saved by heat pump water heating instead of electric resistance water heating to the space conditioning efficiencies creating an equivalent SEER and an equivalent HSPF, would not be representative of the unit's true energy efficiency. The Department was aware of the research by manufacturers into integrated appliances and was already developing test procedures and rating strategies with NIST when this petition was submitted. NIST published its research report in August 1989 as NISTIR 89–4154, "A Proposed Methodology for Rating Air-Source Heat Pumps that Heat, Cool, and Provide Domestic Hot Water." (hereafter referred to as the NISTIR). The report recommended the use of a combined efficiency descriptor(s) and a combined operating cost(s).

DOE believes that to subtract an energy savings quantity for water heating from the denominator (input) of the output/input ratio that applies to space cooling or heating artificially inflates the system efficiencies, SEER and HSPF, and would not represent the efficiency of the HydroTech 200 in either mode. Based on the material included in Carrier's Application for Interim Waiver, DOE could only grant Carrier total relief from the central air conditioner test procedure, i.e. exempting it from testing and rating. This would have been contrary to Carrier's intent since Carrier sought the waiver in order to make SEER and HSPF representations. Carrier, therefore, had to test and rate the HydroTech 2000 model heat pump without regard for the water heating function.

Each of the 11 comments on the Carrier petition for waiver addressed the use of an equivalent SEER and an equivalent HSPF. Eight of the eleven comments opposed the use of equivalent values (Trane, Amana, Bard Manufacturing, Heil-Quaker Corporation, Snyder General Corporation, Goodman Manufacturing Corporation, Lennox Industries, and Rheem Manufacturing Company). Three comments endorsed the use of equivalent SEER and HSPF (Artesian Building Systems, Electric Power Research Institute (EPRI), and Victor Goldschmidt).

Artesian, EPRI, and Goldschmidt endorsed the use of equivalent SEER and HSPF values because some measure is needed to communicate the energy savings benefit in terms that homeowners, dealers, builders, utilities, and others can understand. Goldschmidt stated that equivalent SEER and HSPF are required so that the HydroTech 2000 and other similar appliances can fully benefit from the rebate programs offered by utilities. EPRI argued against reporting a combined efficiency descriptor, as discussed in the NISTIR, because such descriptors would be different from and numerically lower than the conventional SEER and HSPF of the heat pump. EPRI also stated that the Carrier proposed rating scheme reflects the high energy savings of the HydroTech 2000 and encourages other manufacturers to assume the developmental costs and risks associated with improving upon the existing heat pump and water heating technology.

Six of the eight comments opposed to the use of equivalent values for the HydroTech 2000 (Amana, Snyder General, Goodman, Lennox, Trane, and Rheem) stated that misapplication of energy savings occurs if performance factors associated with single functions (space conditioning) are used for rating dual function appliances (space conditioning and water heating). These comments also expressed apprehension in giving a second definition to SEER and HSPF. Five comments (Amana, Heil-Quaker, Goodman, Trane, and Rheem) stated that the current DOE rating system and the FTC labeling program would be distorted by the inappropriate crediting of energy savings to the SEER aNd HSFF, thus providing an unfair competitive advantage to the Carrier Corporation. Goodman and Rheem believe that the consumer may easily be confused by the conventional and equivalent SEERs and HSPFs. Amana argued that, if anything, the higher performance of the HydroTech 2000 results because of more efficient water heating, not more efficient space conditioning as is implied by the equivalent values.

Trane gave an example of this misapplication, using an example of an integrated heat pump/water heater (HP/WH) appliance having a supplementary solar domestic hot water heating component; Trane demonstrated how potentially misleading energy efficiency ratings can become when all the energy savings are allocated to one component of an integrated appliance. The heat pump went from a normal HSPF value of 6.5 to an equivalent HSPF value of 8.5 when the initial water heating energy savings were added to the heat pump. The equivalent HSPF was raised further to 10.5 when the solar energy savings were added. Lennox and Trane commented that "equivalent" values may not clearly convey that estimated performance is based on connecting the HydroTech 2000 with an electric water hearter as opposed to a gas-fired water heater.

Five comments (Amana, Heil-Quaker, Lennox, Trane, and Rheem) proposed alternatives to using the proposed equivalent values. Amana, Heil-Quaker, Lennox, Trane, and Rheem recommended that the SEER and HSPF of the HydroTech 2000 be reported along with an estimate of the annual cost savings that results from the integration of space conditioning and water hearing over independent space conditioning and electric water heating (Amana, Heil-Quaker, Lennox, Trane, and Rheem). In addition, Amana proposed reporting the annual energy cost for the electric water heating used in rating the HydroTech 2000, only now operating alone. Finally, Rheem favored an approach consistent with the NISTIR, to use a combined efficiency descriptor. The NISTIR recommended using combined space conditioning and water heating performance factors and combined operating costs.

In response to DOE's denial for an Interim Waiver and the comments received on the petition for waiver, some of which supported the Carrier Petition, Carrier requested a meeting to present its rebuttal response. After the meeting with DOE staff Carrier agreed that the HydroTech 2000 model heat pump be tested using the existing test procedure and rating method for determining the SEER and HSPF in order to compare its cooling and heating efficiency with other heat pumps. Carrier further agreed to use a methodology, determined by DOE, for testing the HydroTech 2000 as it functions as an integrated appliance, i.e., performing domestic water heating only and when performing both space conditioning and water heating. This methodology would provide a credit to be applied to the total annual operating cost, summing the costs for cooling and heating and substracting the energy saved by using the HydroTech 2000 instead of the electric water heater, for the energy savings realized from the water hearing performed by the HydroTech 2000. The savings from

integrating the HydroTech 2000 heat pump with a "standard" electric water heater are to be carried against the cost for space conditioning as derived by NIST in its letter report dated December 19, 1989.

This letter report analyzed the procedures proposed by the Carrier rebuttal and the NISTIR for determining the annual energy consumption of the HydroTech 2000 when integrated with a standard electric water heater. Both procedures are based on DOE's existing test procedure for variable speed heat pumps and the proposed test procedure for water heaters. NIST and Carrier expressed differing views as to how many tests and at what conditions these test should be performed to represent the operation of an integrated appliance. After comparing the two approaches NIST found only a 0.7 percent variance in SEER.

Similar comparisons were performed between the Carrier and the NISTIR calculation procedures for the space heating and water heating. The results of these comparisons indicate that the difference between the two calculation procedures no not significantly affect the calculation of efficiency. These results indicate that water heating with an electric resistance water heater (WH–RES) depends primarily on the tank recovery test results and secondly upon the way the results are used in the bin calculation [1] procedure. The effect of additional testing, suggested by NIST, to provide more data for the combined space cooling mode is shown to be insufficient to warrant the extra test burden. As shown in NIST's letter report the additional tests and data appear to influence the shifting of the energy consumption in each distinct mode without affecting any real change in the overall total (1158.0 KWH versus 1158.6 KWH). NIST recommended the additional tests in order to differentiate between maximum and minimum operating speeds and full condensing (water heating only) versus desuperheating (space conditioning and water heating). The Carrier approach determines capacities and power usages for the combined mode using a linear interpolation between data points for a minimum speed, full condensing water heating condition and a maximum speed, desuperheating water heating condition. NIST, in its December letter report, recommends no significant changes to the Carrier test procedure regarding its bin calculation procedure or the number of required tests.

The calculations associated with the water-source, frost accumulation test presented by NIST and Carrier have two different algorithms. Neither NIST or DOE can, at this time, determine which is the more accurate approach, if there is one. Without actual data it is not possible for NIST to recommend one approach above another. Therefore DOE has concluded that for the purposes of this wavier the Carrier approach is acceptable in computing the energy consumption during the operating of the heat pump in an integrated mode.

NIST and Carrier have provided different approaches as to what is a "typical" draw schedule. NIST has proposed imposing two 16.1 gallon draws one hour apart during the tank recovery tests. NIST's rationale for proposing this draw schedule is based on information gathered during previous testing on water heaters. Carrier, on the on the hand, proposes using a draw schedule of four consecutive draws, occurring one hour apart, of 15, 6, 6, and 6 gallons. Carrier has stated that this draw profile was proposed based on comparisons using a computer simulation of the HydroTech 2000. Using this simulation, Carrier determined that the proposed abbreviated draw schedule gave results that adequately duplicated results of a distributed draw profile. NIST is evaluating the two alternatives believes both to be satisfactory and for the purpose of a waiver DOE should allow Carrier to use the Carrier method.

Even though the final steps of the NIST and Carrier approaches give results that differ on the order of 0.2 percent, NIST still believes that its method can be more readily extrapolated to heat pumps having a desuperheater which is expected to be the next development.

NIST, in its review of the comments and the Carrier petition, concluded that is was reasonable for Carrier to use the DOE test procedures for heat pumps for its model series HydroTech 2000 to determine the SEER and HSPF. Since the submittal, Carrier has formally revised its proposed test procedure twice. The first revision contained corrections to text and equation errors that appeared in the original document. In the second revision, Carrier submitted a methodology for estimating an annual energy/cost credit to replace equivalent SEER and equivalent HSPF as the method for reporting performance. This second revision also contained a few minor changes and additions regarding the test procedure.

NIST has reviewed Carrier's rebuttal comments, including the Carrier revised test procedure for consistency with the existing DOE test procedures for heat pumps and the proposed amendment to test procedures for water heaters. NIST performed the calculations in an effort to quantify differences between the Carrier and NIST methods regarding (1) The format of the bin calculations, (2) the number of tests for the combined space cooling and water heating mode, and (3) the method for calculating the water heating contributed by the HydroTech 2000 versus the water heating resistive elements. NIST performed these calculations using a set of performance data consisting of Carrier-supplied data, best-guess extrapolations of the Carrier data, and hypothetical tank recovery/cyclic test data. The calculations performed by NIST indicate that both the NIST and Carrier approaches will give comparable results for the seasonal energy consumption rates of the HydroTech 2000.

In general, NIST recommended only a few fundamental changes to the test procedure and bin calculations proposed by Carrier. NIST believes, however, that due to insufficient test and performance data possible errors may remain in the sections on calculating (1) the fractional operating times and (2) the annual energy/cost credit.

Based on a review of the calculation logic, calculations using theoretical data, and the NIST validation of both procedures, DOE believes that the HydroTech 2000 should be rated as both a conventional heat pump using SEER and HSPF and as an integrated heat pump/water heating (HP/WH) appliance by calculating an annual energy/cost credit as recommended by five of the comments. The annual energy credit is the difference between the annual energy required to perform the space conditioning and water heating functions separately minus the energy consumption of the space conditioning and water heating when performed as an integrated appliance by the HydroTech 2000 and a standard electric water heater.

The current representatives of operating costs for heat pumps is broken down into the mode of operating, i.e., cooling or heating. The ARI directory provides performance data as well as both the SEER and HSPF ratings. Based

[1] Bin calculations are used to sum the ratios of various temperature conditions over the total season (hours). During the cooling season one temperature bin is 87 °F with a ratio of 0.104 of the total season. The energy used at this condition is summed with the energy used at the other bins to determine the total energy used in the cooling season.

on these ratings the operating costs for cooling and heating are calculated and provided in separate columns so that the consumer can predict not only the total energy cost for a year but also by season.

Example:

TOTAL ANNUAL OPERATING COST

[In dollars]

Model	Nominal capacity	SEER	HSPF	Cooling cost	Heating cost	Integration credit [1]
Hydro-2000	36,000 Btu/h	14.0	9.4	546.00	685.00	−193.00

[1] Assume a standard electric water heater with an EF = 0.87, 52 gal. capacity has an annual operating cost of $468.00 when operating independently. The cost to operate the electric water heater resistive elements when integrated with the HydroTech 2000 is $215.00, the difference is $253.00. However, the HydroTech 2000, when operating in the water heating only mode, uses $60.00 more energy to heat water above the cost of space conditioning, making the integration credit $193.00.

To determine these performance descriptors, two different calculation procedures are required: the existing heat pump calculation procedure, with two modifications for defrost tests as described below, and a calculation procedure structured to treat the HydroTech 2000 as a multifunction, integrated HP/WH appliance. Although the two calculation procedures are significantly different, the testing required for the integrated appliance calculation procedure includes the standard heat pump tests.

The bin calculation procedure proposed by Carrier will be used to determine the combined (space conditioning and water heating) performance factors of the HydroTech 2000 for each operating season. These combined performance factors are used to calculate the total energy consumed by the HydroTech 2000 system, i.e., including the electric water heater, for each season. The seasonal totals are summed and used to calculate the energy cost credit.

The Carrier HydroTech 2000 is rated as a conventional heat pump using the existing DOE heat pump test procedures, except for the following modifications:

(1) The HydroTech 2000 is connected to the electric water heater and its refrigerant-to-water heat exchanger is filled with water during the space heating only and space cooling only tests; and

(2) the frost accumulation test(s) is conducted with the electric water heater connected so that a water-source defrost occurs.

The first modification is required because the space conditioning only tests and the water heating mode tests are conducted in succession at a given set of environmental chamber conditions. The option of conducting the space conditioning only tests without having water in the refrigerant-to-water heater was considered but not recommended because such conditions will not occur in the field when operating in a space-conditioning-only mode. The second modification is required since the frost accumulation test normally provides for an air source defrost in the DOE heat pump test procedure. The HydroTech 2000 requires this "waiver" because it controls will use a water-source defrost during the frost accumulation test. NIST recommends allowing Carrier to use its proposed frost accumulation test, section 2.2.1 of the Carrier proposed rating procedure, with one exception: use a water heating only coefficient of performance (COP) corresponding to an outdoor tempearture of 35 °F.

DOE, in reviewing the comments by NIST, has determined that both methods provide a fair approach to Carrier and an equitable comparison with other models for consumers. The test procedure proposed by Carrier is acceptable to NIST with modifications. These modifications would require additional test points and increased burden. The test procedures both provide for the water heater savings credit to demonstrate that the HydroTech 2000 has the potential for saving energy when used as an integrated appliance to perform water heating in addition to space conditioning. The electric water heater selected for the purposes of comparison is equipped with dual heating elements rated at 4500 watts each, having a capacity rating of 52 gallons and an EF of 0.87.

Carrier's petition, the comments received on the petition, and NIST's analysis of the petition have provided the basis of DOE's determination.

Decision

Based on the information provided by the petitioner, the NIST analysis and the Department's review, DOE is granting Carrier's request for the use of an alternate test procedure to determine the Annual Operating Costs for its model series HydroTech 2000 central air conditioner, heat pumps with the modifications discussed above.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Carrier (CAC–005) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4) and (5).

(2) Notwithstanding any contrary provisions of appendix M and appendix E of 10 CFR part 430, subpart B, Carrier Corporation shall be permitted to test its HydroTech 2000 model central air conditioners and heat pumps on the basis specified in 10 CFR part 430, with the modifications set forth below:

(i) Test Procedure.

The test procedure shall be as specified in appendix M of 10 CFR part 430, subpart B for determining the Seasonal Energy Efficiency Ratio (SEER) and the Heating Seasonal Performance Factor (HSPF) with only two modifications, the allowance for a water source defrost when operating in the heating mode and the use of a different low temperature test, as described in Attachment A. The ability of the HydroTech 2000 to perform water heating shall be tested in accordance with Attachment A.

(ii) Annual Operating Cost.

The annual operating cost for the HydroTech 2000 shall be determining by summing the operating costs associated with the SEER and HSPF functions of the heat pump minus the (positive) difference between the Annual Operating Cost of a stand alone water heater and the energy cost for providing the annual requirement for domestic hot water using the HydroTech 2000 connected to the stand alone water heater. The cost of the units of energy shall be that established by the Department for that year and used for the purposes of labeling.

(iii) Representations.

The efficiency of the HydroTech 2000 shall be expressed in terms of the SEER, HSPF, Operating cost for cooling, Operating cost for heating, and the Energy cost credit as determined by Attachment A. Disclosure of the basis for the energy credit, i.e. electric water heater, 52 gallon capacity, dual elements at 4500 watts, with an EF of 0.87, is

required wherever the credit is referenced.

(3) The waiver shall remain in effect from the date of issuance of this Order until the Department of Energy prescribes final test procedures appropriate to this model central air conditioner and heat pump.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the applicant and in the comments. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

(5) This waiver is effective immediately upon receipt by the Carrier Corporation. (Case No. CAC–005).

Issued in Washington, DC, March 29, 1990.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

MODIFICATIONS TO TITLE 10, PART 430, APPENDIX M OF THE CODE OF FEDERAL REGULATIONS: PURSUANT TO CASE NO. CAC–005

Decision and Order (Attachment A)

SCOPE: The appliances covered by this Decision and Order are the Carrier Corporation integrated heat pump/water heating appliances that are marketed under the trade name of HydroTech 2000.

2. TESTING REQUIRED

Add the following at the end of section 2.2.4

* * * * *

2.2.4 *Testing required for units with variable-speed compressors.* For the HydroTech 2000, the conventional frost accumulation test shall be replaced by a water-source frost accumulation test. The test conditions and procedures for this test are described in sections 3.2.1.3 and 4.2.1.3 of this decision and order.

* * * * *

2.4 *Testing required for air source units which provide heating, cooling, and domestic water heating.* The requirements for units which provide heating, cooling, and domestic water heating shall be the same as the requirements in section 2.1 and 2.2 of Appendix M with modification to the determination of HSPF and additional test procedures for determining the performance of integrated water heating.

Two types of tests are conducted in evaluating the performance of the HydroTech 2000 when operating as an integrated heat pump/water heating appliance: Tank Recovery Tests and steady state tests. The Tank Recovery Tests are cyclic tests during which the HydroTech 2000 and the standard water heater are connected and a hot water draw schedule is imposed. During the test, the HydroTech 2000 and the water heater resistive elements are monitored as the tank is recovered.

During the steady state tests, the standard water heater is disconnected and water at a constant temperature and flow rate is supplied to the refrigerant-to-water heat exchanger of the HydroTech 2000.

2.4.1 *Additional testing required for the space heating only mode.* The HydroTech 2000 shall be tested at the Low Temperature Test conditions, i.e., 17 °F outdoor temperature, with the unit operating at the intermediate compressor speed that is automatically chosen by the unit as being the maximum allowable speed for a particular range of low outdoor temperatures. This test is hereafter referred to as the Intermediate Low Temperature Test.

2.4.2 *Testing required for water heating modes.* Ten tests are required to quantify the performance of the HydroTech 2000 when it operates in a water heating only mode (DHW mode), a combined space cooling and water heating mode (COOL/DHW), and a combined space heating and water heating mode (HEAT/DHW). These tests are listed in Tables 2a and 2b, with one exception, these additional water heating mode tests and the space conditioning only tests may be conducted in any logical order that mimimizes the testing burden. This exception to the test sequence is that the Tank Recovery Test at 67°F with the HydroTech 2000 operating in a water heating only (DHW) mode must precede all of the steady state tests listed in Tables 2a and 2b.

Two of the ten tests listed in Tables 2a and 2b are Tank Recovery Tests: (1) DHW mode, an outdoor dry bulb temperature of 67°F, and the compressor speed normally chosen by the controls of the HydroTech 2000, and (2) HEAT/DHW mode, an outdoor dry bulb temperature of 17°F, and the maximum compressor and indoor fan speeds allowed by the controls of the HydroTech 2000. The measured averages for the flow rate and temperature of the water entering the refrigerant-to-water heat exchanger during the DHW Tank Recovery Test at 67°F shall be used when conducting the steady state water heating mode tests. Tank Recovery Tests are not used to determine steady-state capacity and electrical power input data.

Eight of the tests listed in Tables 2a and 2b are steady state tests. The steady state, water heating mode tests (DHW, COOL/DHW, and HEAT/DHW) provide capacity and electrical power input data for the additional operating modes of the Hydro/Tech 2000. The data from the water heating modes are used in bin-type calculations along with the steady state data for the space conditioning only modes.

2.4.2.1 *Domestic water heating only mode (DHW).* Four steady state DHW tests and one DHW Tank Recovery Test are required. The DHW mode Tank Recovery test performed at 67°F outdoor temperature shall precede all of the steady state tests in Tables 2a and 2b. All DHW tests are conducted at the maximum compressor speed allowed by the automatic controls of the HydroTech 2000 for the specified outdoor air temperatures: 82, 67, 47, and 17°F.

2.4.2.2 *Integrated space cooling and domestic water heating (COOL/DHW) mode.* Two steady state COOL/DHW tests are required. The test at 67°F outdoor temperature shall be conducted at the mimimum compressor speed. The test at 95°F outdoor temperature shall be conducted at the maximum compressor speed. In addition, the COOL/DHW test at 67° shall be conducted with the fan for the outdoor coil turned off. For the COOL/DHW test at 95°F, the fan for the outdoor coil shall be turned on.

2.4.2.3 *Integrated space heating and domestic water heating (HEAT/DHW) mode.* Two HEAT/DHW steady state tests (17 and 47°F) and one Tank Recovery Test (17°F) are required, each run at the maximum compressor and indoor fan speeds allowed by the automatic controls for the specified outdoor air temperatures.

3. TESTING CONDITIONS

Add the following at the end of section 3.2.1.3

3.2.1.3 *Frost accumulation test conditions.* When equipped with a water-source defrost capability, the water heater resistive elements shall not be employed once the defrost that precedes the actual test period is initiated. The water heater resistive elements shall then remain disabled until the test is completed.

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3.2.4.1 *Testing conditions for the Intermediate Low Temperature Test for the Hydro Tech 2000.* The test conditions shall be identical to the Low Temperature Test, section 3.2.1.4 of Appendix M, with the exception that the intermediate compressor speed that is automatically chosen by the unit as being the maximum allowable speed for a particular range of low outdoor temperatures shall be used.

* * * * *

3.4 *Testing conditions for air source units which provide heating, cooling, and domestic water heating.* The testing conditions for the HydroTech 2000 shall be consistent with section 3.1 and 3.2 of Appendix M with additional requirements for piping connections between the HydroTech 2000 and a standard electric water heater.

3.4.1 *Standard storage-type water heater.* The electric water heater shall have two 4.5 kW-related heating elements and a measured volume of 47.0±2.0 gallons. (A nominally rated 52 gallon water heater is typical.) The water heater shall have an energy factor, as determined using Appendix E of Title 10, Part 430 of the Code of Federal Regulations (CFR) of 0.87.

3.4.1.1 *Water heater installation.* The storage-type water heater shall be supported on a 3/4 inch thick plywood platform supported by three 2×4 inch runners. The water heater shall be located in the same test room as the indoor fan coil unit of the Hydro-Tech 2000. The piping shall be the same size as the connections on the water heater. Unions may be utilized to facilitate installation and removal of the piping arrangements. Each water line between the HydroTech 2000 and the electric water heater shall be 8 feet or less in length. All water lines shall be insulated with a material having a thermal resistance (R) value of not less than 4 $hr \cdot ft^2 \cdot °F/Btu$. A valve shall also be installed in one of the water lines to prevent thermosyphoning during the space conditioning only tests. The check valve that

is part of the HydroTech 2000 appliance is sufficient.

3.4.1.2 *Water heater electrical energy measurement.* The electrical supply voltage to the water heater shall be adjusted using a variac such that the measured power dissipation of the lower resistive element equals 4.50 ±0.05 kilowatts. The electrical energy (W·h) used by the electric water heater shall be measured with an instrument that is accurate to within ± 1.0% of the reading. This measurement is only required for the Tank Recovery Tests.

3.4.1.3 *Manual control of the water heater resistive elements.* During all tests where the HydroTech 2000 and the standard water heater are connected, the on/off status of the elements are manually controlled so that the variability of the tank resistive thermostats is negated.

Install six temperature measurement sensors inside the water heater. Two of these sensor shall be used as a basis for regulating the on/off status of the resistive elements. The position of these two sensors shall be specified by first determining the vertical midpoints for six equal volume nodes within the tank. Nodes designate the vertically stacked, equal volumes used to evenly partition the total volume of the tank. Position one of the sensors at the node midpoint that is closest to and above the upper resistive element. Position the second sensor at the node midpoint that is closest to and above the lower resistive element.

The four remaining tank temperature measurement sensors are positioned one of two ways. If the two sensors used in regulating the resistive elements may be used in calculating an average tank temperature based on six sensors, the remaining four sensors shall be positioned at the midpoints of the four remaining nodes of the six node tank. If the two sensors used in regulating the resistive elements may not be used in calculating an average tank temperature based on six sensors, the remaining four sensors shall be positioned at the vertical midpoints corresponding to a four node tank. In this case, the average tank temperature will be based on four temperature measurements.

The temperature sensors should be positioned away from the heating elements, anodic protective devices, and tank walls. The temperature sensors shall be installed either through the anodic device or relief valve opening. If installed through the relief valve opening, a tee fitting shall be installed such that the relief valve fitting is installed as close as possible to its original location. Added fittings shall be covered with thermal insulation having an R value of 4 hr·ft^2·°F/Btu or greater.

3.4.1.4 *Turn on and turn off temperatures for the resistive elements.* The on/off status of the upper resistive element shall be controlled based on the temperature measured by the sensor positioned immediately above the upper element as per section 3.4.1.3. The upper element shall be turned on when two consecutive measurements of this sensor yield readings of 113 °F or lower. Once turned on, the upper element shall remain on until two consecutive measurements of the upper tank temperature sensor yield readings of 135 °F or higher, at which time the power to the upper resistive element shall be turned off.

The on/off status of the lower resistive element shall be controlled based on the temperature measured by the sensor positioned immediately above the lower element as per section 3.4.1.3. The lower element shall be turned on when two consecutive measurements of this sensor yield readings of 100°F or lower. Once turned on, the upper element shall remain on until two consecutive measurements of the lower tank temperature sensor yield readings of 110°F or higher, at which time the power to the lower resistive element shall be turned off.

3.4.2 *Water conditions during the space conditioning only modes.* During space conditioning only modes, the HydroTech 2000 is tested with the refrigerant-to-water heat exchanger filled with water. The resistive elements of the water heater shall be actively controlled, except where specifically noted. The water pump shall be turned on for 1 minute prior to beginning a space conditioning only test. The pump shall be turned off during the test. The water check valve shall be closed to minimize the refrigerant-to-water heat transfer caused by thermosyphoning.

3.4.3 *Test room conditions.* The outdoor and indoor test room dry bulb/wet bulb combinations are the same as in sections 3.1 and 3.2 except for the DHW mode Tank Recovery Test at 67 °F. For this test, the indoor dry bulb temperature shall be 70.0 °F and the maximum wet bulb temperature shall be 60 °F.

3.4.4 *Water heating only modes.* For all water heating only (DHW) modes, the indoor fan shall be off and the indoor supply duct shall be blocked.

Add the following paragraph to the end of 4.0

4.0 *Test procedures.* With one exception, neither the electrical energy used by the water circulating pump of the HydroTech 2000 nor the electrical energy used by the water heater resistive elements shall be measured during any space conditioning only test. The exception pertains to the water-source, frost accumulation test where the electrical energy used by the water pump shall be among the quantities measured. (The electrical energy used by the water pump and/or the resistive elements is measured during tests where the HydroTech 2000 is operated in a water heating mode.)

Add the following paragraph to the end of 4.2.1.3

4.2.1.3 *Test procedures for the frost accumulation test.* During a water-source, frost accumulation test, the HydroTech 2000 uses its refrigerant-to-water heat exchanger as the energy source during the defrost cycle. Thus energy is taken from the water heater rather than the conditioned space.

Prior to beginning the "preliminary" test period, the water pump of the HydroTech 2000 shall be manually operated for 1 minute. During the preliminary test period (during which the HydroTech 2000 operates in a space heating only mode), the tank resistive elements shall be manually induced to fully recover the water heater. The upper portion of the tank shall be recovered to 135°F and the remaining portion of the tank shall be recovered to 110°F. The full recovery of the tank shall be completed between 5 and 30 minutes before the "preliminary" defrost is initiated. Following this tank recovery, the resistive elements shall be prevented from operating until the test is completed.

4.2.1.5 *Test procedures for the Intermediate Low Temperature Test.* With the exception of the compressor speed and the conditions noted in section 3.4 of this decision and order, the test shall be conducted as per the Low Temperature Test, section 4.2.1.4 of Appendix M. For this test, the compressor shall be operated at the maximum speed normally allowed by the controls of the HydroTech 2000 for "very low temperatures."

4.2.2.5 *Test instrumentation for the water-source, frost accumulation test.* The data recorded during a water-source, frost accumulation test shall be the same as specified in Section 4.2.2.3 of Appendix M, with the addition of the energy removed from the water heater during the defrost. Measurement of the water-side flow rate shall begin 30 seconds after the defrost begins and continue at 30-second intervals until the defrost is terminated. The temperatures of the water entering and exiting the refrigerant-to-water heat exchanger shall be recorded every 15 seconds using instrumentation having a total system accuracy within ±0.3°F of the indicated value. The total time of the defrost cycle shall also be recorded.

Measurements which are used in estimating the combined space heating and water heating performance factor of the HydroTech 2000 when operated as an integrated appliance are also required. These measurements include the static pressure difference across the air flow nozzles, the velocity pressure, and the static pressure at the nozzle throat. These quantities shall be recorded at five minutes and 10 minutes after the start of the water-source, frost accumulation test. in addition, the energy usage of the HydroTech 2000 and the continuously measures, air-side temperature difference for the indoor coil shall be recorded for the same 10 minute period at the start of the test.

4.2.2.5.1 *Water-side temperature measurements.* The temperature of the water entering and leaving the water heater is required. These temperatures shall be measured using sensors installed in wells located at the 90° piping turns closest to the refrigerant-to-water heat exchanger. The tolerance for these water-side temperature measurements are given in Table 1.

4.2.2.5.2 *Water flow rate through the refrigerant-to-water heat exchanger.* A flow meter shall be installed in the piping line that supplies water to the refrigerant-to-water heat exchanger of the HydroTech 2000. The tolerance of the flow measurement is given in Table 1.

4.2.2.6 *Test instrumentation for the intermediate low temperature test.* Instrumentation for this test shall be identical

to that of the High Temperature Test described in section 4.2.2.1 of Appendix M.

4.2.2.7 *Test instrumentation and measurements for the Tank Recover Test.* The key measurements for a Tank Recovery Test are: (1) the temperature of the water entering and leaving the refrigerant-to-water heat exchanger, (2) the instantaneous flow rate of the water entering the refrigerant-to-water heat exchanger during a draw or operation of the circulating pump, (3) the total energy supplied by the water heater resistive elements (W•hr), (4) the total elapsed time that the water pump of the HydroTech 2000 is on, and (5) the total elapsed time that the water heater resistive elements are on. For checking purposes, the temperature of the hot water removed from the tank during a draw, the temperature of the water supplied to the water heater during a draw, and the temperature distribution within the water heater at the end of the test shall be also measured.

The above described temperature and flow rate measurements shall be taken during 15 seconds after the initiation of the first draw and every subsequent 15 seconds that follow until the test is terminated. The readings pertaining to the heat exchanger flow loop, measurements #1 and #2, shall be recorded if the flow measurement indicates a forced flow condition, i.e., a reading above some predetermined "noise" threshold. The temperature of the water supplied to and drawn from the water heater shall be recorded every 15 seconds while a draw is in progress.

Together, measurements #1 and #2 are used to calculate the total energy supplied by HydroTech 2000 in the form of heated domestic water (Btu). This quantity, Q_{R-HP}, shall be calculated as follows:

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$$Q_{R,HP}(\dot{Q}_w) = 60 \cdot \int_{\text{(initiation of first draw)}}^{\text{(termination of test)}} \dot{V}_w(t) \cdot C_{pw}(t) \cdot \rho_w(t) \cdot [T_{w,2}(t) - T_{w,1}(t)]\, dt$$

where,

$\dot{V}_w(t)$ = the instantaneous volumetric water flow rate through the refrigerant-to-water heat exchanger using the data recorded in accordance with section 4.2.2.5 of this decision in order (gal/min).

= 0, when the flow rate reading is below some predetermined "noise" threshold.

$\rho_w(t)$ = water density corresponding to the average of the water temperatures entering and exiting the refrigerant-to-water heat exchanger at time (t), (lb/gal), or

= the water density corresponding to a temperature of 120°F, if the use of a constant value is preferred.

$C_{pw}(t)$ = specific heat of water; determined based on the average of the water temperatures entering and exiting the refrigerant-to-water heat exchanger at time (t), (Btu/lb·°F), or

= the specific heat of water corresponding to a temperature of 120°F, if the use of a constant value is preferred.

$T_{w,1}(t)$ = temperature of the water entering the refrigerant-to-water heat exchanger (°F) at time (t).

$T_{w,2}(t)$ = temperature of the water leaving the refrigerant-to-water heat exchanger (°F) at time (t).

The total energy supplied by the water heater resistive elements, $Q_{R,AUX}$, shall be assumed to equal the 98 per cent of the measured electrical energy input to the elements. $Q_{R,AUX}$ shall be expressed in units of Btu's.

In addition, the data for the entering water temperature and water flow rate from the DHW Tank Recovery Test at 67°F are averaged and later used when conducting the steady state water heating mode tests. These average values are designated by the variables $\dot{V}_a$ and $T_{w,a}$.

The water loop temperatures and flow rate shall be measured using the same instrumentation used for the water-source, frost accumulation test described in section 4.2.2.5 of this decision and order. The tolerances for these measurements and the tank temperature measurements are cited in Table 1.

4.2.2.8 Test instrumentation and measurements for the steady state water heating mode tests. For the combined mode steady state tests, COOL/DHW and HEAT/DHW, the Air Enthalpy Method shall be used to measure indoor, air-side capacity. For all of the water heating modes (COOL/DHW, HEAT/DHW, and DHW), the temperature of the water exiting the refrigerant-to-water heat exchanger shall be recorded as a function of time along with the control variables, i.e., the water loop flow rate and supply water temperature. The instantaneous water heating capacities shall be calculated using,

$$\dot{Q}^*(\text{mode},T_j) = 60 \cdot \dot{V}_w \cdot C_{pw} \cdot \rho_w \cdot [T_{w,2}(t) - T_{w,1}],$$

where,

$\dot{V}_w$ = the volumetric water flow rate through the refrigerant-to-water heat exchanger (gal/min); since this is a controlled parameter during steady state water heating mode tests, the value should be very close to $\dot{V}_a$ (see section 4.2.2.7 of this decision and order);

ρ_w = water density corresponding to the average of the regulated inlet temperature, $T_{w,a}$, and the instantaneous temperature of the water exiting the refrigerant-to-water heat exchanger (lb/gal), or

= water density corresponding to $(T_{w,a} + 130°F)/2$, if the use of a constant value is preferred.

C_{pw} = specific heat of water; determined based on the average of the regulated inlet temperature, $T_{w,a}$, and the instantaneous temperature of the water exiting the refrigerant-to-water heat exchanger (Btu/lb·°F), or

= specific heat of water evaluated at $(T_{w,a} + 130°F)/2$, if the use of a constant value is preferred.

$T_{w,1}$ = temperature of the water supplied to the refrigerant-to-water heat exchanger (°F); since this is a controlled parameter during steady state water heating mode tests, the value should be very close to $T_{w,a}$ (see section 4.2.2.7 of this decision and order);.

$T_{w,2}(t)$ = temperature of the water leaving the refrigerant-to-water heat exchanger (°F) at time (t).

The four sets of reading shall be averaged to determine the average water heating capacity of the HydroTech 2000 for each set of test conditions. Finally, the total electrical energy used by the HydroTech 2000, including its water circulating pump, shall be measured so that a time-averaged value of the electrical power input can be calculated.

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The water loop temperatures and instantaneous flow rate shall be measured using the same instrumentation used for the water-source, frost accumulation test, section 4.2.2.5 of this decision and order. The tolerances for these measurements and the tank temperature measurements are cited in Table 1.

4.4 *Test procedures for units that provide heating, cooling, and domestic water heating.*

4.4.1 *Test procedures for the Tank Recovery Test.* Any water valves shall be arranged such that the HydroTech 2000 and the standard water heater are configured as they would be in a field installation. The water heater shall be filled with water. The resistive elements of the water heater shall be energized to allow heating of the tank to the extent specified in section 4.4.1.2. The HydroTech 2000 is then turned on and allowed to operate in the appropriate water heating mode until the water pump of the HydroTech 2000 automatically cycles off, thus indicating that the water heater is fully recovered. For the remainder of the test, the controls of the HydroTech 2000 shall be allowed to operate as they would normally in the field with regard to deciding when to cycle the water pump, controlling the on/off status of the power supplied to the resistive elements, and choosing an operating mode during times when the HydroTech 2000 is not in a water heating (DHW or HEAT/DHW) mode. Likewise, the on-off status of the water heater resistive elements shall be regulated as specified in section 3.4.1 of this decision and order even though the controls of the HydroTech 2000 are expected to intermittently negate the manual regulation of section 3.4.1.

After the water pump of the HydroTech 2000 has automatically cycled off following the complete recovery of the tank, record the electrical energy measurement for the electric water heater. Within ten minutes after the water pump has cycled off, the Tank Recovery Test shall begin (designated as $\tau=0$) with the initiation of the first hot water draw of the draw schedule specified in section 4.4.3 of this decision and order. Successive draws shall be imposed while the HydroTech 2000 and the electric water heater are monitored. The quantities measured and the frequency of these measurements are described in section 4.2.2.7 of this decision and order. The test shall be terminated either 10 minutes after the water pump for the HydroTech 2000 and/or the tank resistive elements have both cycled off following the final hot water draw or 2 hours after the start of the final draw, whichever occurs sooner. When the test is terminated, again record the energy measurement for the electric water heater.

At the end of a Tank Recovery Test, the average temperature of the hot water removed from the tank and the final average tank temperature (using either 4 or 6 tank temperature sensors as per section 3.4.1.3 of this decision and order) are calculated. If the average hot water delivery temperature is less than 125 °F or the final mean tank temperature is less than 115 °F, the Tank Recovery Test shall be deemed invalid and must be repeated.

4.4.1.1 *Supply water temperature.* The water supplied to the standard electric water heater during a draw shall be 58 °F. This supply water temperature shall vary by less than ± 2 °F.

4.4.1.2 *Heating the water heater prior to beginning a Tank Recovery Test.* The lower resistive element of the water heater shall be energized until the sensor used in controlling this lower element yields two consecutive readings of 110 °F or higher. Next, the upper resistive element of the water heater shall be energized until the sensor used in controlling this upper element yields two consecutive readings of 135 °F or higher.

4.4.1.3 *Water draw schedule during a Tank Recovery Test.* During a Tank Recovery Test, a total of 33.0 gallons of hot water are withdrawn from the standard water heater. At the beginning of the test (elapsed time, $\tau=0$), a 15.0 ± 0.5 gallon draw is initiated. At elapsed times of one, two, and three hours from $\tau=0$, draws of 6.0 ± 0.2 gallons are initiated. For all draws, water shall be removed from the water heater at a rate of 3.0 ± 0.25 gallons per minute.

4.4.2 *Test procedures for the steady state water heating mode tests.* With the water heater disconnected, water at a constant flow rate and temperature is supplied to the inlet of the refrigerant-to-water heat exchanger of the HydroTech 2000. The water supply shall be maintained at a temperature equal to the average inlet temperature measured during the DHW Tank Recovery Test of 67 °F, $T_{w,a}$. During a steady-state test, this supply water temperature shall vary by less than ± 1 °F. The rate at which water is supplied to the refrigerant-to-water heat exchanger shall be regulated to within ± 0.2 gallons of the average value determined from the same DHW Tank Recovery Test, V_a. The speed of the compressor, and if applicable, the speed of the indoor coil fan and on/off status of the outdoor coil fan shall be sent in accordance with section 2.4.2 and Tables 2a and 2b of this decision and order.

The steady state water heating mode tests where frosting of the outdoor coil does not occur shall be conduct in accordance with section 4.1.1 of Appendix M, except for four consecutive sets of readings shall be obtained, rather than seven. Likewise, the steady state tests where frosting does occur shall be conducted in accordance with section 4.1.1 of Appendix M. For such tests, the HydroTech 2000 shall be allowed to conduct a water-source defrost, when needed, by maintaining the constant temperature, constant flow rate water supply to the refrigerant-to-water heat exchanger.

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5.2 CALCULATIONS

5.2.6 Calculation of the Heating Seasonal Performance Factor (HSPF) for the HydroTech 2000. The calculation of the heating seasonal performance factor shall be identical to the method used for evaluating units having a variable-speed compressor, section 5.2.4 of Appendix M, except for the modifications cited below.

5.2.6 1 Heating capacity and electrical power input during the water-source frost accumulation test. The net heating (Btu's) for the water-source, frost accumulation test, $Q_{DEF}(35)$, the net heating capacity, $\dot{Q}_{DEF}(35)$ (Btu/hr), and the total energy usage for the entire frost accumulation test, $E_{DEF}(35)$, are calculated as described in Section 5.2 of Appendix M. $E_{DEF}(35)$ shall include the energy used by the water circulating pump of the HydroTech 2000. The average power usage, $\dot{E}_{DEF}(35)$, shall be calculated using the following equation:

$$\dot{E}_{DEF}(35) = \frac{E_{DEF}(35) + [Q_{defw}(35)/[3.413 \times COP_w(35)]}{t_{DEF}}$$

where,

$COP_w(35)$ = Average coefficient of performance for the HydroTech 2000 while it operates in a water heating only mode (DHW) at a 35°F outdoor (evaporator) temperature; determined using equations 7.2.18 and 7.2.20 of section 7.2.2.3 of this decision and order.

t_{DEF} = length of time between the two defrost terminations of the frost accumulation test.

Q_{defw} = the net energy removed from the water heater during the defrost cycle of the water-source, frost accumulation test (Btu); calculated using the following equation:

$$Q_{defw}(35) = 60 \times \dot{V}_w \times C_{pw} \times \rho \times \Gamma_w, \quad \text{(Btu)}$$

where,

$\dot{V}_w$ = the average volumetric water flow rate through the refrigerant-to-water heat exchanger using the data recorded in accordance with section 4.2.2.5 of this decision and order (gal/min).

ρ = water density corresponding to the average water temperature entering the refrigerant-to-water heat exchanger during the water-source defrost cycle (lb/gal).

C_{pw} = specific heat of water; determined based on the average water temperature entering the refrigerant-to-water heat exchanger during the water-source defrost cycle (Btu/lb•°F).

and Γ_w (hr•°F), which is described by the equation:

$$\Gamma_w = -\int_{\text{(defrost initiation)}}^{\text{(defrost termination)}} [T_{w,2}(t) - T_{w,1}(t)]\, dt$$

where,

$T_{w,1}(t)$ = temperature of the water entering the refrigerant-to-water heat exchanger (°F) at time (t).

$T_{w,2}(t)$ = temperature of the water leaving the refrigerant-to-water heat exchanger (°F) at time (t).

These measurements and calculations are required for the intermediate speed (k=i), water-source frost accumulation test. These measurements and calculations shall also be repeated for the high speed (k=2) test, unless the optional default formulas described in Section 4.2.1.3 of Appendix M are used.

5.2.6.2 Heating capacity and electrical power input for the Intermediate Low Temperature Test. The performance of the HydroTech 2000 when operating in a space heating only mode at low outdoor temperatures shall be determined (1) by using the results from the tests at 17°F and 47°F and maximum compressor speed (k=2) and (2) the results from the Intermediate Low Temperature Test.

When operating within an outdoor temperature range where the HydroTech 2000's maximum compressor speed is limited, space heating (only) capacity and electrical power input shall be less than or equal to the quantities determined using the following equations:

$$\dot{Q}^{k=lim}(T_j) = \dot{Q}^{k=lim}(T_j) - LIM_Q \times \frac{\dot{Q}^{k=2}(47) - \dot{Q}^{k=2}(17)}{47 - 17} \times (17 - T_j)$$

$$\dot{E}^{k=lim}(T_j) = \dot{E}^{k=lim}(T_j) - LIM_E \times \frac{\dot{E}^{k=2}(47) - \dot{E}^{k=2}(17)}{47 - 17} \times (17 - T_j)$$

where "k=lim" refers to the condition where the maximum compressor speed of the HydroTech 2000 is limited at very low outdoor temperatures, and

$$LIM_Q = \frac{\dot{Q}^{k=lim}(17)}{\dot{Q}^{k=2}(17)}$$

$$LIM_E = \frac{\dot{E}^{k=lim}(17)}{\dot{E}^{k=2}(17)}.$$

The above equations shall be used, where appropriate, for calculating the space heating only capacity and electrical power input of the HydroTech 2000 in section 5.2.4 of Appendix M. These equation will be used predominantly in the calculations associated with Case III.

7.0 CALCULATION OF THE ANNUAL ENERGY CREDIT.
The annual energy credit is determined after first conducting bin calculations for three seasons: (1) the space cooling and water heating season, (2) the space heating and water heating season, and (3) the water heating only season. For each season, a combined performance factor is calculated. These performance factors are the dimensional equivalents (i.e., Btu/Wh) of the seasonal coefficient of performances of the integrated system, i.e., the HydroTech 2000 and the electric water heater.

In order to determine the combined performance factors of the HydroTech 2000, the space conditioning output and/or water heating output of the system are balanced against the building load and domestic water heating load at each outdoor temperature to determine (1) the fractional operating time for each operating mode, and (2) the energy consumption rates of the HydroTech 2000 and the electric water heater in each temperature bin. The bin calculations for the domestic hot water load are defined for two daily time periods: an "active" period when hot water draws and tank standby losses require the system to re-charge (designated by m = 1), and a "standby" period when the system operates only to offset tank standby losses (designated by m = 2). Because of the water heating load is divided into two parts of the day, two sets of bin calculations are conducted for each outdoor bin temperature. These calculations are required for each season as described below.

7.1 Combined Performance Factor for the space cooling and water heating season. Overall system performance shall be expressed in terms of a Combined Performance Factor for space cooling and water heating season:

$$CPF_{cs} = \frac{\sum_{m=1}^{2} F_m \left[\sum_{j=1}^{8} \frac{Q(T_j,m)}{N} + \sum_{j=1}^{8} \frac{QW(T_j,m)}{N} \right]}{\sum_{m=1}^{2} F_m \left[\sum_{j=1}^{8} \frac{E(T_j,m)}{N} + \sum_{j=1}^{8} \frac{ER(T_j,m)}{N} \right]}, \qquad [7.1.1]$$

where,

CPF_{cs} = For the space cooling and water heating season, the sum of the total space cooling load and the total useful water heating load divided by sum of the total energy consumption rates of the HydroTech 2000 and the electric water heater (Btu/Wh).

$\frac{Q(T_j,m)}{N}$ = ratio of the total space cooling delivered in temperature bin j and daily time period m to the number of temperature bin hours,

$\frac{QW(T_j,m)}{N}$ = ratio of the total useful water heating delivered to the consumer during the daily time period m and temperature bin j to the number of temperature bin hours; tank standby losses are not included in this quantity,

$\frac{E(T_j,m)}{N}$ = ratio of the total energy used by the HydroTech 2000 in temperature bin j and daily time period m to the number of temperature bin hours,

$\frac{ER(T_j,m)}{N}$ = ratio of the total energy used by the electric water heater in temperature bin j and daily time period m to the number of temperature bin hours, and

F_m = the number of hours corresponding to daily time period m divided by 24 hours.

= G, for m=1 where G is defined with equation 7.1.4.

= (1-G), for m=2.

The quantity $Q(T_j,m)/N$ shall be calculated using the following equation for both daily periods, m = 1 and m=2.

$$\frac{Q(T_j,m)}{N} = \left[X1_m \cdot \dot{Q}_c(T_j) + X2_m \cdot \dot{Q}_{cw}(T_j) \right] \cdot \frac{n_j}{N} \qquad [7.1.2]$$

where,

$X1_m$ = the load factor for the space cooling only mode in temperature bin j and daily period m,

$X2_m$ = the load factor for the combined space cooling and water heating (COOL/DHW) mode in temperature bin j and daily period m,

$\dot{Q}_c(T_j)$ = the steady state space cooling capacity of the HydroTech 2000 when operating in the space cooling only mode in temperature bin j; defined in section 7.1.3.1, and

$\dot{Q}_{cw}(T_j)$ = the steady state space cooling capacity of the HydroTech 2000 when operating in the combined space cooling and water heating (COOL/DHW) mode in temperature bin j; defined in section 7.1.3.2.

$\frac{n_j}{N}$ = the fractional number of hours in temperature bin j as defined in section 6.1.2 of Appendix M.

The quantity $QW(T_j,m)/N$ shall be calculated using the following.

$$\frac{QW(T_j,m)}{N} = \frac{n_j}{N} \cdot \dot{Q}_{DHW}, \text{ for } m = 1 \qquad [7.1.3]$$

$$= 0, \text{ for } m = 2;$$

where,

$\frac{n_j}{N}$ = as defined above with equation 7.1.2.

$\dot{Q}_{DHW}$ = the portion of the water heating load that is associated with daily usage (not tank standby losses), adjusted such that it must be recovered entirely during the active period of the day; defined as follows:

$$= \frac{GPD}{G} \cdot \rho_w \cdot C_{pw} \cdot (T_o - T_i) \cdot \frac{1 \text{ day}}{24 \text{ hr}} \qquad [7.1.4]$$

where,

GPD = 64.3 gallons per day; the total amount of hot water used per day;

ρ_w = water density evaluated at temperature $(T_o + T_i)/2$ (lb/gal);

C_{pw} = constant pressure specific heat of water, evaluated at temperature $(T_o + T_i)/2$ (Btu/lb·°F);

T_o = 135°F; the outlet temperature upon which the water heating load is based;

T_i = 58°F; the inlet temperature upon which the water heating load is based;

G = 0.167; the fraction of the day (4 out of 24 hours) designated for the active period, m=1.

The quantity $E(T_j,m)/N$ shall be calculated using the following for both daily periods (m = 1 and 2).

$$\frac{E(T_j,m)}{N} = \left[\frac{X1_m \cdot \dot{E}_c(T_j) + X2_m \cdot \dot{E}_{cw}(T_j) + X3_m \cdot \dot{E}_w(T_j)}{PLF_m(X_j)} \right] \cdot \frac{n_j}{N} \quad [7.1.5]$$

where,

$X1_m$ = as defined with equation 7.1.2;

$X2_m$ = as defined with equation 7.1.2;

$X3_m$ = the load factor for the water heating only (DHW) mode in temperature bin j and daily period m,

$\dot{E}_c(T_j)$ = the steady state energy consumption rate of the HydroTech 2000 integrated appliance when operating in the space cooling only mode in temperature bin j; defined in section 7.1.3.1,

$\dot{E}_{cw}(T_j)$ = the steady state energy consumption rate of the HydroTech 2000 integrated appliance when operating in the combined space cooling and water heating (COOL/DHW) mode in temperature bin j; defined in section 7.1.3.2,

$\dot{E}_w(T_j)$ = the steady state energy consumption rate of the HydroTech 2000 integrated appliance when operating in the water heating only (DHW) mode in temperature bin j; defined in section 7.1.3.3, and

$PLF_m(X_j)$ = part load factor corresponding to the overall load factor for the HydroTech 2000 in temperature bin j and daily period m; defined as follows:

$$= 1 - C_D \cdot [1 - (X1_m + X2_m + X3_m)] \quad [7.1.6]$$

where,

C_D = the degradation coefficient described in section 5.1.1 of Appendix M.

The quantity $ER(T_j,m)/N$ shall be calculated for both daily periods (m = 1 and 2) as follows:

$$\frac{ER(T_j,m)}{N} = \left\{ (X2_m + X3_m) \cdot KAUX(\dot{Q}) + X4_m \right\} \cdot \frac{n_j}{N} \cdot \dot{E}_{auxw} \quad [7.1.7]$$

where,

$X2_m$ = as defined with equation 7.1.2;

$X3_m$ = as defined with equation 7.1.5;

$X4_m$ = the load factor associated with resistive water heating when only the resistive elements are used to recovery the tank;

$KAUX(\dot{Q})$ = ratio of the total operating time of the resistive elements to the total operating time that the HydroTech 2000 is in a water heating mode; the value of KAUX is assigned based on the water heating capacity of the HydroTech 2000, which varies with outdoor temperature and operating mode; and

$\dot{E}_{auxw}$ = 4500 W; the energy consumption rate of the electric resistive elements (W).

7.1.1 Load factor calculations for each operating mode. The load factors in equations 7.1.2, 7.1.5, 7.1.6, and 7.1.7 ($X1_m$ to $X4_m$) are calculated from equating the seasonal building and water heating loads against the output capacities of the HydroTech 2000 and the water heater resistive elements. The equations take the following format:

$$BL(T_j) = X1_m \cdot \dot{Q}_c(T_j) + X2_m \cdot \dot{Q}_{cw}(T_j) \quad [7.1.8]$$

$$WL(m) = X2_m \cdot \dot{Q}'_{wc}(T_j) + X3_m \cdot \dot{Q}'_w(T_j) + X4_m \cdot \dot{Q}_{auxw} \quad [7.1.9]$$

where,

$BL(T_j)$ = the building load as defined in section 5.1.3 of Appendix M.

$WL(m)$ = the total water heating load for time period m.

The water heating load differs between the two daily periods as follows:

$$WL(1) = \dot{Q}_{DHW} + \dot{Q}_{standby}, \text{ and} \quad [7.1.10]$$

$$WL(2) = \dot{Q}_{standby}. \quad [7.1.11]$$

where,

$\dot{Q}_{DHW}$ = as defined by equation 7.1.4, and

$\dot{Q}_{standby}$ = 215 Btu/hr; the standby heat loss rate of the standard electric water heater having an energy factor of 0.87.

The space cooling and water heating capacities in equations 7.1.8 and 7.1.9 are defined as follows:

$\dot{Q}_c(T_j)$ = defined in section 7.1.3.1,

$\dot{Q}_{cw}(T_j)$ = defined in section 7.1.3.2,

$$\dot{Q}'_{wc}(T_j) = \dot{Q}_{wc}(T_j) + KAUX(\dot{Q}_{wc}) \cdot \dot{Q}_{auxw} \quad [7.1.12]$$

$\dot{Q}wc(Tj)$ = defined in section 7.1.3.2,

$\dot{Q}_{auxw}$ = 15051 Btu/hr (=15358 • 0.98); the water heating capacity of the water heater resistive elements.

$$\dot{Q}'_{w}(T_j) = \dot{Q}_{w}(T_j) + KAUX(\dot{Q}_{w}) \cdot \dot{Q}_{auxw} \quad [7.1.13]$$

$\dot{Q}_w(T_j)$ = defined in section 7.1.3.3,

In equations 7.1.12 and 7.1.13, the terms $KAUX(\dot{Q}_{wc})$ and $KAUX(\dot{Q}_w)$ represent values of KAUX obtained from the following equation,

$$KAUX(\dot{Q}^*) = \left[\frac{A_R(\dot{Q}^*)}{1 - A_R(\dot{Q}^*)} \right] \cdot \frac{\dot{Q}^*}{\dot{Q}_{auxw}} \quad [7.1.14]$$

where,

$\dot{Q}^*$ = designates the water heating capacity of the HydroTech 2000 for a particular operating mode and outdoor temperature (Btu/h);

$A_R(\dot{Q}^*)$ = the ratio of the water heating contributed by the resistive elements to the total water heating contributed by both the elements and the HydroTech 2000; defined using equation 7.1.15.

A value for A_R for any water heating capacity is determined from linearly interpolating between the two values for A_R that are determined from the two Tank Recovery Tests. During each of these two tests, the water heating contributions of the HydroTech 2000, $Q_{R,HP}$, and the water heater resistive elements, $Q_{R,AUX}$, are determined along with the average water heating capacity of the HydroTech 2000, $\dot{Q}^*$ (refer to section 4.2.2.7). This laboratory data is used to calculate two values of A_R (= $Q_{R,AUX}$ / [$Q_{R,AUX}$ + $Q_{R,HP}$]). The two laboratory-derived values of A_R are designated below as A_R1 and A_R2. The average water heating capacity of the HydroTech 2000 that is associated with each of these two laboratory values are designated as $\dot{Q}^*1$ and $\dot{Q}^*2$. Once these values are calculated, a value of A_R for any water heating capacity, $\dot{Q}^*$, shall be determined as follows:

$$A_R(\dot{Q}^*) = A \cdot \dot{Q}^* + B \qquad [7.1.15]$$

where the constants A and B are determined using,

$$A = \frac{A_R1 - A_R2}{(\dot{Q}^*1 - \dot{Q}^*2)}, \text{ and} \qquad [7.1.16]$$

$$B = \frac{A_R2 \cdot \dot{Q}^*1 - A_R1 \cdot \dot{Q}^*2}{\dot{Q}^*1 - \dot{Q}^*2}. \qquad [7.1.17]$$

Equations 7.1.8 and 7.1.9 are solved for the load factors observing the conditional requirements defined in section 7.1.2. The value for the load factor when only resistive water heating is required, $X4_m$, is obtained from equation 7.1.9.

The procedure described above, shall be completed twice for each temperature bin, once with the active water heating load WL(1) and once with the standby water heating load WL(2). In both cases, the building load and steady state capacities and electrical power inputs are the same. The load factors will vary for daily period (m=1 and m=2).

7.1.2 Conditional requirements for calculating the load factors (fractional operating times). The load factors $X1_m$, $X2_m$, and $X3_m$ shall be calculated such that equations 7.1.8 and 7.1.9 (and later, equations 7.2.7, 7.2.8, and 7.3.6) and the following conditions are satisfied.

a. Each X value must be positive but less than one (unity).

b. The sum of all X values cannot exceed one (unity).

c. X1 cannot exceed $\left\{ 1.0 \quad \frac{BL}{\dot{Q}_c} \text{ or } \frac{BL}{\dot{Q}_h} \right.$

d. X2 cannot exceed $\left\{ 1.0 \quad \frac{WL}{\dot{Q}'_{wc}} \text{ or } \frac{WL}{\dot{Q}'_{wh}} \quad \frac{BL - X1 \times \dot{Q}_c}{\dot{Q}_{cw}} \text{ or } \frac{BL - X1 \times \dot{Q}_h}{\dot{Q}_{hw}} \quad 1 - X1 \right.$

e. X3 cannot exceed $\left\{ 1.0 \quad \frac{WL - X2 \times \dot{Q}'_{wc}}{\dot{Q}'_w} \quad \frac{WL - X2 \times \dot{Q}'_{wh}}{\dot{Q}'_w} \quad 1 - X1 - X2 \right.$

These conditions will lead to the following cases:

Case A: Below the lowest heating balance point, space heating only mode.

X1 = 1 Exception: If T_j is below the compressor cut-off value, $\delta''(T_j)$ [refer to section 7.2 of this decision and order], then

X1 = 0
X2 = 0
X3 = 0

Case B: Space cooling only mode, combined space cooling and water heating (COOL/DHW) mode, and domestic water heating only (DHW) mode (or space heating only mode, combined space heating and water heating [HEAT/DHW] mode, and domestic water heating only [DHW] mode) are all possible.

X2 = Minimum value from step d above; for first iteration assume X1 = 0.

$$X1 = \frac{(BL - X2 \times \dot{Q}_{hw})}{\dot{Q}_h} \quad \text{or} \quad \frac{(BL - X2 \times \dot{Q}_{cw})}{\dot{Q}_c}$$

X3 = Maximum value from step e above

Case C: Only a water heating load exists, i.e., building load is zero (BL = 0).

X1 = 0
X2 = 0
X3 = Maximum value from step e above

Case D: Above highest cooling balance point, operate exclusively in the space cooling only mode.

X1 = 1
X2 = 0
X3 = 0

7.1.3 Equations for determining the steady state capacities and electrical power inputs of the HydroTech 2000. For the space cooling and water heating season, three operating modes of the HydroTech 2000 must be considered within the bin calculations. These three modes are the space cooling only mode, the combined space cooling and water heating (COOL/DHW) mode, and the domestic water heating only (DHW) mode. The method for calculating the steady state capacities and electrical power inputs for each of these modes are defined below.

7.1.3.1 Capacity and electrical power input for the space cooling only mode. For each bin temperature T_j, the steady state capacity of the HydroTech 2000 when operating in a space cooling only mode, $\dot{Q}_c(T_j)$, is determined as per section 5.1.6 of Appendix M. Likewise, for each bin temperature T_j, the steady state electrical power input of the HydroTech 2000 when operating in a space cooling only mode, $\dot{E}_c(T_j)$, is determined as per section 5.1.6 of Appendix M.

7.1.3.2 Capacities and electrical power input for the combined space cooling and water heating (COOL/DHW) mode. Steady state cooling capacity for the combined space cooling and water heating (COOL/DHW) mode, at the appropriate outdoor temperatures, shall be calculated using the following,

$$\dot{Q}_{cw}(T_j) = \begin{cases} \dot{Q}_{cw}(67) + \dfrac{\dot{Q}_{cw}(95) - \dot{Q}_{cw}(67)}{95 - 67} \times (T_j - 67), & \text{if } T_j \le 95°F \\ \text{OR} & \\ \dot{Q}_{cw}(95) + \dfrac{\dot{Q}_c^{k=2}(95) - \dot{Q}_c^{k=2}(82)}{95 - 82} \times (T_j - 95), & \text{if } T_j > 95°F \end{cases}$$

Steady state water heating capacity for the combined space cooling and water heating (COOL/DHW) mode, at the appropriate outdoor temperatures, shall be calculated using the following,

$$\dot{Q}_{wc}(T_j) = \begin{cases} \dot{Q}_{wc}(67) + \dfrac{\dot{Q}_{wc}(95) - \dot{Q}_{wc}(67)}{95 - 67} \times (T_j - 67), & \text{if } T_j \le 95°F \\ \text{OR} & \\ \dot{Q}_{wc}(95) + \dfrac{\dot{Q}_c^{k=2}(95) - \dot{Q}_c^{k=2}(82)}{95 - 82} \times (T_j - 95), & \text{if } T_j > 95°F \end{cases}$$

Steady state electrical power input for the combined space cooling and water heating (COOL/DHW) mode, at the appropriate outdoor temperatures, shall be calculated using the following,

$$\dot{E}_{cw}(T_j) = \begin{cases} \dot{E}_{cw}(67) + \dfrac{\dot{E}_{cw}(95) - \dot{E}_{cw}(67)}{95 - 67} \times (T_j - 67), & \text{if } T_j \le 95°F \\ \text{OR} & \\ \dot{E}_{cw}(95) + \dfrac{\dot{E}_c^{k=2}(95) - \dot{E}_c^{k=2}(82)}{95 - 82} \times (T_j - 95), & \text{if } T_j > 95°F \end{cases}$$

7.1.3.3 Capacity and electrical power input for the domestic water heating only (DHW) mode. Steady state water heating capacity for the domestic water heating only (DHW) mode, at the appropriate outdoor temperatures, shall be calculated using the following,

$$\dot{Q}_w(T_j) = \begin{cases} \dot{Q}_w(67) + \dfrac{\dot{Q}_w(82) - \dot{Q}_w(67)}{82 - 67} \times (T_j - 67), & \text{if } T_j \geq 67°F \\ \text{OR} & \\ \dot{Q}_w(47) + \dfrac{\dot{Q}_w(67) - \dot{Q}_w(47)}{67 - 47} \times (T_j - 47), & \text{if } 47°F < T_j < 67°F \end{cases}$$

Steady state electrical power input for the domestic water heating only (DHW) mode, at the appropriate outdoor temperatures, shall be calculated using the following,

$$\dot{E}_{cw}(T_j) = \begin{cases} \dot{E}_w(67) + \dfrac{\dot{E}_w(82) - \dot{E}_w(67)}{82 - 67} \times (T_j - 67), & \text{if } T_j \geq 67°F \\ \text{OR} & \\ \dot{E}_w(47) + \dfrac{\dot{E}_w(67) - \dot{E}_w(47)}{67 - 47} \times (T_j - 47), & \text{if } 47°F < T_j < 67°F \end{cases}$$

7.2 Combined Performance Factor for the space heating and water heating season. Overall system performance shall be expressed in terms of a Combined Performance Factor for the space heating and water heating season:

$$CPF_{hs} = \frac{\sum_{m=1}^{2} F_m \left(\sum_{j=1}^{M} \frac{Q(T_j,m)}{N} + \sum_{j=1}^{M} \frac{QW(T_j,m)}{N} \right)}{\sum_{m=1}^{2} F_m \left(\sum_{j=1}^{M} \frac{E(T_j,m)}{N} + \sum_{j=1}^{M} \frac{ER(T_j,m)}{N} + \sum_{j=1}^{M} \frac{RH(T_j,m)}{N} \right)} \quad [7.2.1]$$

where,

CPF_{hs} = For the space heating and water heating season, the sum of the total building load and the total useful water heating load divided by sum of the total energy consumption rates of the HydroTech 2000 (including the electric resistive space heating) and the electric water heater (Btu/Wh).

$\frac{Q(T_j,m)}{N}$ = ratio of the total space heating delivered in temperature bin j and daily time period m to the number of temperature bin hours,

$\frac{QW(T_j,m)}{N}$ = ratio of the total useful water heating delivered to the consumer during the daily time period m and temperature bin j to the number of temperature bin hours; tank standby losses are not included in this quantity,

$\frac{E(T_j,m)}{N}$ = ratio of the total energy used by the HydroTech 2000 in temperature bin j and daily time period m to the number of temperature bin hours,

$\frac{ER(T_j,m)}{N}$ = ratio of the total energy used by the electric water heater in temperature bin j and daily time period m to the number of temperature bin hours,

$\frac{RH(T_j,m)}{N}$ = ratio of the total energy used by the electric resistance space heating element in temperature bin j and daily time period m to the number of temperature bin hours; defined in section 5.2.2 of Appendix M,

M = number of outdoor temperature bins for the particular climatic region; defined in section 6.2.4 of Appendix M,

F_m = the number of hours corresponding to daily time period m divided by 24 hours.

= G, for m=1 where G is defined with equation 7.1.4.

= (1-G), for m=2.

The quantity $Q(T_j,m)/N$ shall be calculated using the following equation for both daily periods, m = 1 and m=2.

$$\frac{Q(T_j,m)}{N} = \frac{n_j}{N} \cdot BL(T_j) \qquad [7.2.2]$$

where,

$BL(T_j)$ = the building load as defined in section 5.2.2 of Appendix M.

$\frac{n_j}{N}$ = the fractional number of hours in temperature bin j as defined in section 6.2.4 of Appendix M.

The quantity $QW(T_j,m)/N$ shall be calculated using the following:

$$\frac{QW(T_j,m)}{N} = \frac{n_j}{N} \cdot \dot{Q}_{DHW}, \text{ for } m = 1 \qquad [7.2.3]$$

$$= 0, \text{ for } m = 2;$$

where,

$\frac{n_j}{N}$ = as defined with equation 7.2.2

$\dot{Q}_{DHW}$ = as defined with equation 7.1.4

The quantity $E(T_j,m)/N$ shall be calculated using the following for both daily periods (m = 1 and 2).

$$\frac{E(T_j,m)}{N} = \left[\frac{X1_m \cdot \dot{E}_h(T_j) + X2_m \cdot \dot{E}_{hw}(T_j) + X3_m \cdot \dot{E}_w(T_j)}{PLF_m(X_j)} \right] \cdot \frac{n_j}{N} \cdot \delta''(T_j) \qquad [7.2.4]$$

where,

$X1_m$ = the load factor for the space heating only mode in temperature bin j and daily period m;

$X2_m$ = the load factor for the combined space heating and water heating (HEAT/DHW) mode in temperature bin j and daily period m;

$X3_m$ = the load factor for the water heating only (DHW) mode in temperature bin j and daily period m,

$\dot{E}_h(T_j)$ = the steady state energy consumption rate of the HydroTech 2000 integrated appliance when operating in the space heating only mode in temperature bin j; defined in section 7.2.2.1,

$\dot{E}_{hw}(T_j)$ = the steady state energy consumption rate of the HydroTech 2000 integrated appliance when operating in the combined space heating and water heating (HEAT/DHW) mode in temperature bin j; defined in section 7.2.2.2,

$\dot{E}_w(T_j)$ = the steady state energy consumption rate of the HydroTech 2000 integrated appliance when operating in

the water heating only (DHW) mode in temperature bin j; defined in section 7.2.2.3,

$\frac{n_j}{N}$ = as defined with equation 7.2.2,

$\delta''(T_j)$ = as defined in section 5.2.2 of Appendix M, and

$PLF_m(X_j)$ = part load factor corresponding to the overall load factor for the HydroTech 2000 in temperature bin j and daily period m; defined as follows:

$$= 1 - C_D \cdot [1 - (X1_m + X2_m + X3_m)] \qquad [7.2.5]$$

where,

C_D = the degradation coefficient described in section 5.2 of Appendix M.

The quantity $ER(T_j,m)/N$ shall be calculated for both daily periods (m = 1 and 2) as follows:

$$\frac{ER(T_j,m)}{N} = \left\{ (X2_m + X3_m) \cdot KAUX(\dot{Q}) + X4_m \right\} \cdot \frac{n_j}{N} \cdot \dot{E}_{auxw} \qquad [7.2.6]$$

where,

$X2_m$ = as defined with equation 7.2.4;

$X3_m$ = as defined with equation 7.2.4;

$X4_m$ = the load factor associated with resistive water heating when only the resistive elements are used to recovery the tank;

$KAUX(\dot{Q})$ = as defined with equation 7.1.7; and

$\dot{E}_{auxw}$ = 4500 W; the energy consumption rate of the electric resistive elements (W).

7.2.1 Load factor calculations for each operating mode. The load factors in equations 7.2.4, 7.2.5, and 7.2.6 ($X1_m$ to $X4_m$) are calculated from equating the seasonal building and water heating loads against the output capacities of the HydroTech 2000 and the water heater resistive elements. The equations take the following format:

$$BL(T_j) = [\, X1_m \cdot \dot{Q}_h(T_j) + X2_m \cdot Q_{hw}(\dot{T}_j) \,] \cdot \delta''(T_j) + RH(T_j) \qquad [7.2.7]$$

$$WL(m) = [\, X2_m \cdot \dot{Q}'_{wh}(T_j) + X3_m \cdot \dot{Q}'_w(T_j) \,] \cdot \delta''(T_j) + X4_m \cdot \dot{Q}_{auxw} \qquad [7.2.8]$$

where,

$BL(T_j)$ = as defined with equation 7.2.2.

$WL(m)$ = the total water heating load for time period m.

$WL(1)$ = as defined by equation 7.1.10;

$WL(2)$ = as defined by equation 7.1.11;

$\delta''(T_j)$ = as defined in section 5.2.2 of Appendix M; and

$RH(T_j)$ = the rate of electric resistance space heating (Btu/h) required to supplement the space heating contribution of the HydroTech 2000 such that the entire building load is satisfied; determined using equation 7.2.7.

The space heating and water heating capacities in equations 7.2.7 and 7.2.8 are defined as follows:

$\dot{Q}_h(T_j)$ = defined in section 7.2.2.1,

$\dot{Q}_{hw}(T_j)$ = defined in section 7.2.2.2,

$$\dot{Q}'_{wh}(T_j) = \dot{Q}_{wh}(T_j) + KAUX(\dot{Q}_{wh}) \cdot \dot{Q}_{auxw} \qquad [7.2.9]$$

$\dot{Q}wh(Tj)$ = defined in section 7.2.2.2,

$\dot{Q}_{auxw}$ = 15051 Btu/hr (= 15358 • 0.98); the water heating capacity of the water heater resistive elements.

$$\dot{Q}'_w(T_j) = \dot{Q}_w(T_j) + KAUX(\dot{Q}_w) \cdot \dot{Q}_{auxw} \qquad [7.2.10]$$

$\dot{Q}_w(T_j)$ = defined in section 7.2.2.3,

In equations 7.2.9 and 7.2.10, the terms $KAUX(\dot{Q}_{wh})$ and $KAUX(\dot{Q}_w)$ represent values of KAUX obtained using equations 7.1.14 - 7.1.17. Equations 7.2.7 and 7.2.8 are solved for the load factors observing the conditional requirements defined in section 7.1.2 of this decision and order. The value for the load factor when only resistive water heating is required, $X4_m$, is obtained from equation 7.2.8.

The procedure described above, shall be completed twice for each temperature bin, once with the active water heating load WL(1) and once with the standby water heating load WL(2). In both cases, the building load and steady state capacities and electrical power inputs are the same. The load factors will vary for each daily period.

7.2.2 Equations for determining the steady state capacities and electrical power inputs of the HydroTech 2000. For the space heating and water heating season, three operating modes of the HydroTech 2000 must be considered within the bin calculations. These three modes are the space heating only mode, the combined space heating and water heating (HEAT/DHW) mode, and the domestic water heating only (DHW) mode. The method for calculating the steady state capacities and electrical power inputs for each of these modes are defined in subsections, 7.2.2.1 to 7.2.2.3.

For the HEAT/DHW and the DHW mode of the HydroTech 2000, the steady state capacities and electrical power inputs are corrected for (1) the effects of frosting/defrosting and (2) the limiting of the compressor speed at low outdoor temperatures.

7.2.2.1 Capacity and electrical power input for the space heating only mode. For each bin temperature T_j, the steady state capacity, $\dot{Q}_h(T_j)$, and the steady state electrical input, $\dot{E}_h(T_j)$, when operating in a space heating only mode are determined as per section 5.2.4 of Appendix M and sections 5.2.6.1 and 5.2.6.2 of this decision and order.

7.1.2.2 Capacities and electrical power input for the combined space heating and water heating (HEAT/DHW) mode. Steady state heating capacity for the combined space heating and water heating (HEAT/DHW) mode, at the appropriate outdoor temperatures, shall be calculated using the following,

$$\dot{Q}_{hw}(T_j) = \left[\dot{Q}_{hw}(17) + \frac{\dot{Q}_{hw}(47) - \dot{Q}_{hw}(17)}{47 - 17} \cdot (T_j - 17) \right] \cdot DEF1(T_j) \cdot F(T_j) \qquad [7.2.11]$$

where,

$$DEF1(T_j) = \begin{cases} 1.0, \text{ if } 17°F > T_j > 45°F \\ 1 - (1 - QR_{defhw}) \cdot \dfrac{(T_j - 17)}{35 - 17}, \text{ if } 17°F \le T_j \le 45°F \end{cases} \qquad [7.2.12]$$

$$F(T_j) = \begin{cases} 1.0, \text{ if } T_j > T_{lim} \\ LIM_Q, \text{ if } T_j \le T_{lim} \end{cases} \qquad [7.2.13]$$

The quantity QR_{defhw} in equation 7.2.12 is defined in section 7.2.2.4 of this decision and order. The quantity LIM_Q in equation 7.2.13 is defined in section 5.2.6.2 of this decision and order. The variable T_{lim} is used to designate the outdoor temperature below which the controls of the HydroTech 2000 automatically limit the compressor speed.

Steady state water heating capacity for the combined space heating and water heating (HEAT/DHW) mode, at the appropriate outdoor temperatures, shall be calculated using the following,

$$\dot{Q}_{wh}(T_j) = \left[\dot{Q}_{wh}(17) + \frac{\dot{Q}_{wh}(47) - \dot{Q}_{wh}(17)}{47 - 17} \cdot (T_j - 17) \right] \cdot DEF2(T_j) \cdot F(T_j) \quad [7.2.14]$$

where,

$$DEF2(T_j) = \begin{cases} 1.0, \text{ if } 17°F > T_j > 45°F \\ 1 - (1 - QR_{defwh}) \cdot \frac{(T_j - 17)}{35 - 17}, \text{ if } 17°F \leq T_j \leq 45°F \end{cases} \quad [7.2.15]$$

$F(T_j)$ = as defined in equation 7.2.13.

The quantity QR_{defwh} in equation 7.2.15 is defined in section 7.2.2.4 of this decision and order.

Steady state electrical power input for the combined space heating and water heating (HEAT/DHW) mode, at the appropriate outdoor temperatures, shall be calculated using the following,

$$\dot{E}_{hw}(T_j) = \left[\dot{E}_{hw}(17) + \frac{\dot{E}_{hw}(47) - \dot{E}_{hw}(17)}{47 - 17} \cdot (T_j - 17) \right] \cdot DEF4(T_j) \cdot H(T_j) \quad [7.2.16]$$

where,

$$DEF4(T_j) = \begin{cases} 1.0, \text{ if } 17°F > T_j > 45°F \\ 1 - (1 - ER_{defhw}) \cdot \frac{(T_j - 17)}{35 - 17}, \text{ if } 17°F \leq T_j \leq 45°F \end{cases} \quad [7.2.17]$$

$$H(T_j) = \begin{cases} 1.0, \text{ if } T_j > T_{lim} \\ LIM_E, \text{ if } T_j \leq T_{lim} \end{cases} \quad [7.2.18]$$

The quantity ER_{defhw} in equation 7.2.17 is defined in section 7.2.2.4 of this decision and order. The quantity LIM_E in equation 7.2.18 is defined in section 5.2.6.2 of this decision and order. The variable T_{lim} is used to designate the outdoor temperature below which the controls of the HydroTech 2000 automatically limit the compressor speed.

7.1.2.3 Capacity and electrical power input for the domestic water heating only (DHW) mode. Steady state water heating capacity for the domestic water heating only (DHW) mode, at the appropriate outdoor temperatures, shall be calculated using the following,

$$\dot{Q}_w(T_j) = \begin{cases} \dot{Q}_w(47) + \dfrac{\dot{Q}_w(67) - \dot{Q}_w(47)}{67 - 47} \times (T_j - 47), & \text{if } 47°F < T_j < 67°F \\ \text{OR} & \\ \left[\dot{Q}_w(17) + \dfrac{\dot{Q}_w(47) - \dot{Q}_w(17)}{47 - 17} \cdot (T_j - 17) \right] \cdot DEF3(T_j) \cdot F(T_j) & \text{if } T_j \leq 47°F \end{cases} \quad [7.2.19]$$

where,

$$DEF3(T_j) = \begin{cases} 1.0, & \text{if } 17°F > T_j > 45°F \\ 1 - (1 - QR_{defw}) \cdot \dfrac{(T_j - 17)}{35 - 17}, & \text{if } 17°F \leq T_j \leq 45°F \end{cases} \quad [7.2.20]$$

$F(T_j)$ = as defined in equation 7.2.13.

The quantity QR_{defw} in equation 7.2.20 is defined in section 7.2.2.4 of this decision and order.

Steady state electrical power input for the domestic water heating only (DHW), at the appropriate outdoor temperatures, shall be calculated using the following,

$$\dot{E}_w(T_j) = \begin{cases} \dot{E}_w(47) + \dfrac{\dot{E}_w(67) - \dot{E}_w(47)}{67 - 47} \times (T_j - 47), & \text{if } 47°F < T_j < 67°F \\ \text{OR} & \\ \left[\dot{E}_w(17) + \dfrac{\dot{E}_w(47) - \dot{E}_w(17)}{47 - 17} \cdot (T_j - 17) \right] \cdot DEF5(T_j) \cdot H(T_j) & \text{if } T_j \leq 47°F \end{cases} \quad [7.2.21]$$

where,

$$DEF5(T_j) = \begin{cases} 1.0, \text{ if } 17°F > T_j > 45°F \\ 1 - (1 - ER_{defw}) \cdot \dfrac{(T_j - 17)}{35 - 17}, \text{ if } 17°F \leq T_j \leq 45°F \end{cases} \quad [7.2.22]$$

$H(T_j)$ = as defined in equation 7.2.18.

The quantity ER_{defw} in equation 7.2.22 is defined in section 7.2.2.4 of this decision and order.

7.2.2.4 Calculation of the defrost degradation factors for the combined space heating and water heating (HEAT/DHW) mode and the domestic water heating only (DHW) mode. The performance data for the combined space heating and water heating (HEAT/DHW) mode and the domestic water heating only (DHW) mode must be corrected for the effects of frosting/defrosting. This correction is made using defrost degradation factors. These factors are derived from the data collected during the water-source, frost accumulation test (refer to section 4.2.2.5 of this decision and order).

As described in section 4.2.2.5 of this decision and order, measurements are made during the first 10 minutes of the water-source, frost accumulation test. The total space heating delivered during this 10-minute period, $Q_o(35)$, is calculated as follows:

$$Q_o(35) = \frac{60 \cdot \dot{\bar{V}} \cdot C_{pa} \cdot \Gamma_o}{[V_n \cdot (1 + W_n)]}, \text{ Btu}$$

where,

$\dot{\bar{V}}$ = the average air flow rate as determined by using the 5 minute and 10 minute data described in section 4.2.2.5 of this decision and order;

C_{pa} = specific heat at constant pressure of air-water mixture per pound of dry air, (Btu/lb·°F).

V^n = specific volume of air-water mixture at the same dry-bulb temperature, humidity ratio, and pressure used in the determination of the indoor air flow rate (ft^3/lb).

W_n = Humidity ratio (lb/lb).

$$\Gamma_o = \int_{\text{(time of defrost termination)}}^{\text{(10 minutes after defrost termination)}} [T_{a,2}(t) - T_{a,1}(t)]\, dt$$

where,

$T_{a,1}(t)$ = dry-bulb temperature of air entering the indoor coil (°F) at time (t).

$T_{a,2}(t)$ = dry-bulb temperature of air leaving the indoor coil (°F) at time (t).

The total energy usage of the HydroTech during the 10-minute period is also measured. This quantity is divided by 10 minutes to get the average electrical power input, $\dot{E}_o(35)$. The average space heating capacity for the period is similarly determined, $\dot{Q}_o(35)$.

The defrost degradation factors for the two water heating modes are defined as shown below. These factors are used in the calculation of steady capacities and power inputs, sections 7.2.2.2 and 7.2.2.3 of this decision and order.

For the space heating and water heating (HEAT/DHW) mode, the defrost degradation factors are calculated as follows:

1. Space heating capacity degradation factor for the HEAT/DHW mode.

$$QR_{defhw} = \frac{\dot{Q}_{DEF}(35)}{\dot{Q}_o(35)},$$

where $\dot{Q}_{DEF}(35)$ is defined in section 5.2 of Appendix M.

2. Water heating capacity degradation factor for the HEAT/DHW mode.

$$QR_{defwh} = \frac{\dfrac{Q_{DEF}(35) - Q_{defw}(35)}{t_{DEF}}}{\dot{Q}_o(35)},$$

where the variables in the numerator are defined in section 5.2 of Appendix M and section 5.2.6.1 of this decision and order.

3. Electrical power input degradation factor for the HEAT/DHW mode.

$$ER_{defhw} = \frac{\dot{E}_{DEF}(35)}{\dot{E}_{o}(35)},$$

where $\dot{E}_{DEF}(35)$ is defined in section 5.2.6.1 of this decision and order.

For the domestic water heating only (DHW) mode, the defrost degradation factors are calculated as follows:

1. Water heating capacity degradation factor for the DHW mode.

$$QR_{defw} = QR_{defwh}$$

2. Power input degradation factor for the DHW mode.

$$ER_{defw} = ER_{defhw}$$

7.3 Combined Performance Factor for the water heating only season. Performance shall be expressed in terms of a Combined Performance Factor for the water heating only season:

$$CPF_{ws} = \frac{\sum_{m=1}^{2} F_m \left(\sum_{j=2}^{2} \frac{QW(57°F,m)}{N} \right)}{\sum_{m=1}^{2} F_m \left(\sum_{j=2}^{2} \frac{E(57°F,m)}{N} + \sum_{j=2}^{2} \frac{ER(57°F,m)}{N} \right)}, \quad [7.3.1]$$

where,

CPF_{ws} = For the water heating only season, the total useful water heating load divided by sum of the total energy consumption rates of the HydroTech 2000 and the electric water heater that are used in meeting the water heating load (Btu/Wh); this performance factor is based upon a single bin calculation at 57°F outdoor temperature, j=2.

$\frac{QW(57,m)}{N}$ = ratio of the total useful water heating delivered to the consumer during the daily time period m and temperature bin j=2 (i.e., 57°F outdoor temperature) to the number of temperature bin hours; tank standby losses are not included in this quantity,

$\frac{E(57,m)}{N}$ = ratio of the total energy used by the HydroTech 2000 in temperature bin j=2 and daily time period m to the number of temperature bin hours,

$\frac{ER(57,m)}{N}$ = ratio of the total energy used by the electric water heater in temperature bin j=2 and daily time period m to the number of temperature bin hours, and

F_m = the number of hours corresponding to daily time period m divided by 24 hours.

= G, for m=1 where G is defined with equation 7.1.4.

= (1-G), for m=2.

The quantity QW(57,m)/N shall be calculated using the following:

$$\frac{QW(57,m)}{N} = \dot{Q}_{DHW}, \text{ for } m = 1 \qquad [7.3.2]$$

$$= 0, \text{ for } m = 2;$$

where,

$\dot{Q}_{DHW}$ = as defined by equation 7.1.4

The quantity E(57,m)/N shall be calculated using the following for both daily periods (m = 1 and 2).

$$\frac{E(57,m)}{N} = \frac{X3_m \cdot \dot{E}_w(57)}{PLF_m(X_2)} \qquad [7.3.3]$$

where,

$X3_m$ = the load factor for the water heating only (DHW) mode at 57°F outdoor temperature and daily period m,

$\dot{E}_w(57)$ = the steady state energy consumption rate of the HydroTech 2000 integrated appliance when operating in the water heating only (DHW) mode at 57°F outdoor temperature; defined in section 7.2.2.3,

$PLF_m(X_2)$ = part load factor corresponding to the overall load factor for the HydroTech 2000 in temperature bin j=2 and daily period m; defined as follows:

$$= 1 - C_D \cdot [1 - (X2_m + X3_m)] \qquad [7.3.4]$$

where,

C_D = the degradation coefficient described in section 5.2 of Appendix M.

The quantity ER(57,m)/N shall be calculated for both daily periods (m = 1 and 2) as follows:

$$\frac{ER(57,m)}{N} = \left\{ X3_m \cdot KAUX(\dot{Q}) + X4_m \right\} \cdot \dot{E}_{auxw} \qquad [7.3.5]$$

where,

$X3_m$ = as defined with equation 7.3.3;

$X4_m$ = the load factor associated with resistive water heating when only the resistive elements are used to recovery the tank;

$KAUX(\dot{Q})$ = as defined with equation 7.1.7; and

$\dot{E}_{auxw}$ = 4500 W; the energy consumption rate of the electric resistive elements (W).

7.3.1 Load factor calculations for each operating mode. The load factors in equations 7.3.3, 7.3.4, and 7.3.5 ($X2_m$ to $X4_m$) are calculated from equating the seasonal water heating load against the output capacity of the HydroTech 2000 while operating in a water heating only (DHW) mode and the water heater resistive elements. The equation takes the following format:

$$WL(m) = X3_m \cdot \dot{Q}'_w(57) + X4_m \cdot \dot{Q}_{auxw} \qquad [7.3.6]$$

where,

WL(m) = the total water heating load for time period m.

WL(1) = as defined with equation 7.1.10;

WL(2) = as defined with equation 7.1.11;

The water heating capacities in equations 7.3.6 are defined as follows:

$\dot{Q}_{auxw}$ = 15051 Btu/hr (= 15358 • .98); the water heating capacity of the water heater resistive elements.

$$\dot{Q}'_w(57) = \dot{Q}_w(57) + KAUX(\dot{Q}_w) \cdot \dot{Q}_{auxw} \qquad [7.3.7]$$

$\dot{Q}_w(57)$ = defined in section 7.2.2.3,

In equation 7.3.7, the term KAUX($\dot{Q}_w$) represent values of KAUX obtained using equations 7.1.14 - 7.1.17. Equation 7.3.6 is solved for the load factors observing the conditional requirements defined in section 7.1.1. The value for the load factor when only resistive water heating is required, $X4_m$, is obtained from equation 7.3.6.

The procedure described above, shall be completed twice for the 57°F temperature bin, once with the active water heating load WL(1) and once with the standby water heating load WL(2). In both cases, the steady state capacities and electrical power inputs are the same. The load factors will vary for the two daily periods (m=1 and m=2).

7.4 Procedure for calculating the annual energy credit and the annual cost credit. The annual energy credit is the energy saved using an integrated heat pump and electric water heater rather than use the same heat pump and water heater separately to meet the same building and water heating loads. The energy credit is the difference between the total energy usage associated with the SEER and HSPF of the HydroTech 2000 and the energy factor of the standard electric water heater (E_f) and the total energy usage associated with the three seasonal combined performance factors for the HydroTech 2000 when integrated with the standard water heater.

7.4.1 Annual energy usage for the separate heat pump and water heater.

$$AE_{sep} = \frac{\text{Rated Cooling Capacity} \cdot \text{CLH}}{\text{SEER}} + \frac{\text{Rated Heating Capacity} \cdot \text{HLH} \cdot C}{\text{HSPF}} + \frac{\text{WOUT}}{E_f},$$

where,

AE_{sep} = the annual energy consumption associated with using the HydroTech 2000 only for space conditioning and using the electric water heater for all of the annual water heating (W)

Rated Cooling Capacity = $\dot{Q}_c(95)$, in units of Btu/hr;

Rated Heating Capacity = Design Heating Requirement, as defined in section 6.2.6 of Appendix M;

CLH = cooling load hours, as defined in section 6.3 of Appendix M (and as reproduced in Table 3);

HLH = heating load hours, as defined in section 6.3 of Appendix M (and as reproduced in Table 3);

C = 0.77, an experience factor which improves the agreement between the measured and the calculated building load

SEER = as defined in section 5.1.6 of Appendix M;

HSPF = as defined in section 5.2.4 of Appendix M;

WOUT = energy content of the hot water supplied to the consumer in a year; this quantity does not include the tank losses or recovery inefficiencies;

= 4368 kWh;

E_f = 0.87, the energy factor of the standard electric water heater.

7.4.2 Annual energy usage for the integrated heat pump and water heater.

$$AE_{int} = \frac{\text{Rated Cooling Capacity} \cdot \text{CLH} + \text{WOUT} \cdot (\text{CSH}/8760) * 3413}{CPF_{cs}} +$$

$$\frac{\text{Rated Heating Capacity} \cdot \text{HLH} \cdot C + \text{WOUT} \cdot (\text{HSH}/8760) * 3413}{CPF_{hs}} +$$

$$\frac{\text{WOUT} * (\text{WSH}/8760) * 3413}{CPF_{ws}},$$

where,

CPF_{cs} = as defined in section 7.1 of this decision and order;

CPF_{hs} = as defined in section 7.2 of this decision and order;

CPF_{ws} = as defined in section 7.3 of this decision and order; and

CSH, HSH, and WSH are the cooling season hours, heating season hours, and water-heating-only season hours that correlate to a particular combination of heating and cooling load hours, Table 3.

7.4.3 Annual energy credit for the HydroTech 2000 integrated heat pump/water heating appliance.

$$AEC = AE_{sep} - AE_{int}$$

7.4.4 Annual cost credit for the HydroTech 2000 integrated heat pump/water heating appliance.

$$ACC = AEC \cdot \$/W{\cdot}h,$$

where, $/Wh = Current value for the national average unit cost for residential electrical energy, or an appropriate local value.

TABLE 1

TEST TOLERANCES FOR DOMESTIC WATER HEATING TESTS

	CYCLIC TEST		STEADY STATE TESTS	
TYPE OF TOLERANCE :	OPER.	COND.	OPER.	COND.
ITEM:				
1. Air Temperature (F)				
Outdoor Dry-Bulb				
Entering	2.0	1.0	2.0	0.5
Leaving	-	-	2.0	-
Outdoor Wet-Bulb				
Entering	2.0	1.0	1.0	0.3
Leaving	-	-	1.0	-
Indoor Ambient Air				
Dry-Bulb	2.0	1.0	2.0	1.0
2. Domestic Water Temp. (F)				
Tank - Entering	4.0	2.0	-	-
Heat Pump - Entering	-	-	1.0	0.5
- Leaving	-	-	1.0	-
3. Domestic Water Flow Rate (gallons/minute)	0.2	0.1	0.2	0.1
4. Electrical Voltage (%)	2.0	-	2.0	-

: OPER. = Test operating tolerance: Total permissible range in actual observations
COND. = Test condition tolerance: Total permissible variation of time-averaged value from specified test condition.

Table 2a. Summary of Test Conditions for the Water Heating Modes of the Carrier HydroTech 2000 for Outdoor Temperatures Greater Than 65°F

Operating Mode	Compressor Operation		Outdoor Fan Status	Outdoor Temperature				Indoor Temperature			
	Speed	Mode		Dry Bulb °F	Dry Bulb °C	Wet Bulb[1] °F	Wet Bulb[1] °C	Dry Bulb °F	Dry Bulb °C	Wet Bulb °F	Wet Bulb °C
COOL/DHW	Max	Steady-state	On	95.0	35.0	75.0	23.9	80.0	26.7	67.0	19.4
DHW	[3]	Steady-state	On	82.0	27.8	65.0	18.3	80.0	26.7	67.0	19.4
COOL/DHW	Min	Steady-state	Off	67.0	19.4	53.5	11.9	80.0	26.7	67.0	19.4
DHW	[3]	Steady-state	On	67.0	19.4	53.5	11.9	80.0	26.7	67.0	19.4
DHW - Recovery	[3]	Cyclic	On	67.0	19.4	53.5	11.9	70.0	21.1	60.0	15.6

[1] Applies only if HydroTech 2000 rejects condensate to the outdoor coil
[2] Speed selection is prescribed in the Code of Federal Regulations, Title 10, Part 430, Appendix M, Section 4.1.1.4.
[3] As chosen by the controls of the HydroTech 2000

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Table 2b. Summary of Test Conditions for the Water Heating Modes of the Carrier HydroTech 2000 for Outdoor Temperatures Less Than 65°F

Operating Mode	Compressor Operation		Indoor Fan Speed	Outdoor Temperature				Indoor Temperature			
	Speed	Mode		Dry Bulb °F	Dry Bulb °C	Wet Bulb[1] °F	Wet Bulb[1] °C	Dry Bulb °F	Dry Bulb °C	Wet Bulb[1] °F	Wet Bulb[1] °C
HEAT/DHW	Max	Steady-state	Max[2]	47.0	8.3	43.0	6.1	70.0	21.1	60.0	15.6
DHW	[3]	Steady-state	Off	47.0	8.3	43.0	6.1	70.0	21.1	60.0	15.6
DHW	[3]	Steady-state	Off	17.0	-8.3	15.0	-9.4	70.0	21.1	60.0	15.6
HEAT/DHW	Max	Steady-state	Max[2]	17.0	-8.3	15.0	-9.4	70.0	21.1	60.0	15.6
HEAT/DHW - Rec.	Max	Cyclic	Max[2]	17.0	-8.3	15.0	-9.4	70.0	21.1	60.0	15.6

[1] Maximum values
[2] Highest value normally permitted by the controls of the HydroTech 2000 for the prevailing conditions
[3] As chosen by the controls of the HydroTech 2000

[FR Doc. 90-8257 Filed 4-10-90; 8:45 am]
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Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Monday, April 23, 1990, 8:30 a.m.—5 p.m., Tuesday, April 24, 1990, 8:30 a.m.—3 p.m.

Place: Auditorium, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy, Physics Advisory Panal, U.S. Department of Energy, ER–221, GTN, Washington, DC 20585, Telephone: (301) 353–4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy phsysics research program.

Tentative Agenda:

Monday, April 23, 1990 and Tuesday, April 24, 1990

—Discussion of National Science Foundation Elementary Particle Physics Programs
—Discussion of Department of Energy high energy physics programs
—Discussion of Department of Energy superconducting super collider (SSC) programs
—Status reports on the Superconducting Super Collider Project
—Report of the HEPAP Subpanel on the U.S. High Energy Physics Reseeach Program for the 1990's
—Discussion of the impact of the President's FY 1991 budget request on the National High Energy Physics Program
—Reports on and discussions of topics of general interest in high energy physics
—Public comment

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on April 5, 1990.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 90–8413 Filed 4–10–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders During Week of October 16 Through October 20, 1989.

During the week of October 16 through October 20, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Automation Engineering, Inc., 10/20/89, KFA–0320

Automation Engineering, Inc. filed an appeal from a partial denial by the Savannah River Operations Office of a request for information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the twelve withheld documents consisted of internal memoranda, letters, drafts and other predecisional material which was properly withheld under Exemption 5. The DOE also found that these documents contained no reasonably segregable factual material that could be released without compromising other properly withheld material. Accordingly, the appeal was denied.

Francisco A. Tomei, PhD., 9/18/89, KFA–0321, KFA–0322

Francisco A. Tomei, PhD. filed an Appeal from determinations by the Chief of Freedom of Information and Privacy Acts, Office of Administrative Services, Headquarters (Headquarters) of the Department of Energy (DOE) and by the Privacy Act Coordinator, Classification and Information Programs Staff, Albuquerque Operations Office (Albuquerque) of the DOE regarding requests for records under the Privacy Act. With respect to the Albuquerque determination, it was discovered that Dr. Tomei's records might be located under the name, Francisco Alberto Tomeitorres. Accordingly, the DOE remanded the matter to Albuquerque so that it could conduct a further search. Regarding the Headquarters determination, the DOE determined that Headquarters maintained no records under Tomei's name or personal identifier in a system of records as defined by DOE regulations. Accordingly, the appeal of the Headquarters determination was denied.

Interlocutory Order

T.E. Reserve Corp. 10/20/89, KRZ–0400

T.E. Reserve Corporation filed a Motion to Strike certain material contained in the Economic Regulatory Administration's Response to the firm's Statement of Objections to a Proposed Remedial Order. The PRO alleges that TERC violated the layering rule, 10 CFR 212.186, by reselling crude oil at a markup without performing any historical and traditional crude oil reselling service. The disputed material describes the ERA's view of TERC's crude oil reselling activities and its relationship to other firms which miscertified crude oil. The DOE found that TERC failed to demonstrate that the disputed material was either irrelevant to the enforcement proceeding or that its retention in the record would prejudice the firm. Accordingly, the Motion to Strike was denied.

Supplemental Order

Economic Regulatory Administration, Phoenix Petroleum Co., 10/16/89, LRX–0001

The Department of Energy granted motion of the Economic Regulatory Administration to correct a mathematical error in a Remedial Order that was issued to Phoenix Petroleum Company. Accordingly, the amount of the firm's refund obligation under the Remedial Order was reduced by $20,000 to $31,244,326.32.

Refund Applications

Arliss R. Sievers, et al., 10/18/89, RF272–4120, et al.

The DOE issued a Decision and Order granting refunds in the subpart V crude oil refund proceeding to 15 applicants based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user presumed to have been injured by the alleged overcharges. The sum of the refunds granted in this decision is $34,170.

Atlantic Richfield Co., Phil Castiglione, et al., 10/18/89, RF304–5301, et al.

The DOE issued a decision and order concerning seventy-eight applications for refund filed by seventy-one

claimants in the Atlantic Richfield Company special refund proceeding. Applying the small claims, end-user and mid-range presumptions of injury, the DOE concluded that the applicants should receive refunds totaling $95,319, representing $71,748 in principal and $23,571 in accrued interest.

Commonwealth of Kentucky, Washington State Dep't. of Transportation, 10/16/89, RF272-49283, RF272-50638

The State of Kentucky and a state agency of the State of Washington filed applications for refund in the subpart V crude oil refund proceedings. A group of utilities, transporters and manufacturers filed objections to these applications, claiming that the applicants should not be eligible to receive refunds because they were not injured end-users. The objectors also claimed that as governmental entities the applicants are ineligible for refunds from the twenty percent of the cruide oil overcharge funds reserved to pay subpart V claims. The DOE rejected both of the objectors' arguments. With respect to the latter, the DOE found that the Stripper Well Settlement Agreement does not prohibit a State, or a subdivision of a State, from filing a claim for direct restitution. With respect to the former argument, the DOE found that the objectors had not met the burden of going forward with evidence to rebut the end-user presumption of injury. The DOE determined that a large portion of Kentucky's claim, and all of Washington DOT's claim, were based on purchases of road construction materials that contained some quantifiable amounts of liquid asphalt. The DOE then determined that each applicant was an end-user of the products for which it claimed a refund, except for a certain road construction materials that were previously held to be ineligible products for this proceeding. Accordingly, the DOE granted refunds based on the end-user presumption of injury in the total amount of $318,842.

Exxon Corp., Arthur A. Alborano, et al., 10/18/89, RF307-2496, et al.

The DOE issued a decision and order concerning four applications for refund filed in the Exxon Corporation special refund proceeding. The applicants used Exxon printout volumes, except for 1974, for which they submitted reasonable alternative gallonage figures. The sum of the refunds granted in this decision is $2,653, representing $2,148 in principal and $505 in interest.

Exxon Corp., Exxon Self Serve, et al., 10/19/89, RF307-157, et al.

The DOE issued a Decision and Order concerning 13 applications for refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this decision is $8,881 ($7,242 principal plus $1,639 interest).

Exxon Corp./North Park Lincoln-Mercury, et al., 10/18/89, RF307-634, et al.

The DOE issued a decision and order concerning 22 applications for refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share was less than $5,000. The sum of the refunds granted in this decision is $17,887 ($14,885 principal and $3,402 interest).

Exxon Corp./Spencer Automotive, Inc., et al., 10/18/89, RF307-1820 et al.

The DOE issued a decision and order concerning 49 applications for refund filed in the Exxon Corporation special refund proceeding. The DOE acceptable the gallonage figures submitted by six of those nine applicants that were taken directly from the applicant's actual Exxon invoices or monthly sales records from the consent order period. The refunds of the remaining three of those nine applicants were calculated based on their Exxon volume sheet figures. Using the small claims injury presumption, the DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this decision is $27,592 ($22,344 principal plus $5,248 interest).

Exxon Corp./Shuford Mills Inc., et al., 10/20/89, RF307-1744, et al.

The Office of Hearings and Appeals of the Department of Energy issued a decision and order granting 45 applications for refund from consent order funds obtained from Exxon Corporation. The applicants were either end users, or were resellers or retailers who sought refunds of less than $5,000. Each applicant was therefore presumed to have suffered injury as a result of Exxon's alleged ovecharges. The sum of the refunds granted is $157,051.

Exxon Corp./Western Air Lines, et al., 10/19/89, RF307-5730, et al.

The DOE issued a decision and order concerning three applications for refund filed by three airlines in the Exxon Corporation special refund proceeding. The DOE accepted the applicants' gallonage figures, which were obtained from the applicants' actual records from the consent order period. Because they were end-users, the applicants were not required to prove injury. The sum of the refunds granted in this decision is $584,336, representing $473,223 in principal and $111,113 in interest.

Exxon Corp./Wilber W. Foreman, et al. 10/19/89, RF307-6192, et al.

The Office of Hearings and Appeals of the Department of Energy issued a decision and order granting 31 applications for refund from consent order funds obtained from Exxon Corporation. The applicants were either end users, or were resellers or retailers who sought refunds of less than $5,000. Each applicant was therefore presumed to have suffered injury as a result of Exxon's alleged overcharges. The sum of the refunds granted is $32,882.

Getty Oil Co./Land Gas & Tire Co., et al. 10/18/89, RF265-2812, et al.

The DOE issued a decision and order concerning five applications for refund with regard to purchases of motor gasoline covered by a consent order that DOE entered into with Getty Oil Company. All of the applicants were retailers of Getty motor gasoline during the consent order period. In each claim, the applicant provided documentation of indirect purchases from Getty and established eligibility for a small claims refund. In this case, none of the direct purchasers of the Getty product filed an application for refund in the Getty proceeding. Accordingly, the applications were considered under the appropriate presumption of injury. The refunds totaled $12,370, representing $5,961 in principal and $6,409 in interest.

Gulf Oil Corp./Barnes Gulf Service Station, et al., 10/18/89, RF300-72, et al.

The DOE issued a decision and order concerning 10 applications for refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this decision, including accrued interest, is $95,135.

Grovertown Truckstop, Inc., 10/17/89, RF272-6691

The DOE issued a decision and order concerning the application for refund filed by Grovertown Truckstop, Inc. in the subpart V crude oil overcharge refund proceeding. The DOE found that Grovertown, a retailer of refined petroleum products, failed to

demonstrate that competitive factors prevented it from passing through crude oil overcharges to its customers. Therefore, the DOE concluded that Govertown was not injured by any of the overcharges associated with the refined petroleum products that it purchased. Accordingly, its application for refund was denied.

Gulf Oil Corp./Bob Johnson, 10/20/89, RF272–37

The DOE issued a decision and order concerning a motion for reconsideration filed by Bob Johnson, a retailer of refined petroleum products, in the subpart V Crude Oil refund proceeding. Since Bob Johnson failed to demonstrate injury as required of retailers of refined products in the Crude Oil proceeding, the motion was denied.

Gulf Oil Corp./Bursaw Oil Corp., 10/19/89, RF300–693

The DOE issued a decision and order concerning an application for refund submitted by Bursaw Oil Corporation in the Gulf Oil Corporation special refund proceeding. The application was approved using a presumption of injury. The total refund granted in this decision, which includes both principal and interest, was $1,621.

Gulf Oil Corp./Claude Lee, Station, 10/19/89, RF300–3463, RF300–3464

The DOE issued a decision and order concerning two applications for refund submitted in the Gulf Oil Corporation special refund proceeding by Claude Lee, Station, a reseller and consignee of refined petroleum products. Both applications were approved using the applicable presumptions of injury for resellers and consignees. The sum of the refunds granted in this decision, which includes principal and interest, is $1,957.

Gulf Oil Corp./East Central Gulf, et al., 10/17/89, RF300–10413, et al.

The DOE issued a decision and order concerning 27 applications for refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this decision, including interest, is $65,764.

Gulf Oil Corp./Jess' Gulf Service, et al., 10/19/89, RF300–10040, et al.

The DOE issued a decision and order concerning 49 applications for refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this decision, including accrued interest, is $90,991.

Gulf Oil Corp./Joe Zalta, 10/18/89, RF300–9568, RF300–9569

The DOE issued a decision and order concerning two applications for refund submitted in the Gulf Oil Corporation special refund proceeding by Joe Zalta. Using the appropriate presumptions of injury, the DOE granted Zalta a refund of $5,320 in principal and $1,912 in interest.

Gulf Oil Corp./M. M. Fowler, 10/17/89, RF300–427

The DOE issued a decision and order concerning an application for refund submitted in the Gulf Oil Corporation special refund proceeding by M. M. Fowler, Inc. a reseller and consignee of Gulf petroleum products. The application was approved using the appropriate presumptions of injury for resellers and consignees. The amount of the refund granted was $25,500.

Gulf Oil Corp./N&B Enterprises, 10/19/89, RF300–634

The DOE issued a decision and order concerning an application for refund submitted by N&B Enterprises in the Gulf Oil Corporation special refund proceeding. The application was approved using a presumption of injury. The total refund granted in this decision, which includes both prinicpal and interest, was $4,212.

Gulf Oil Corp./Nelson L. Capote, 10/16/89, RF300–10206, RF300–10207, RF300–10208

The DOE issued a decision and order concerning three applications for refund submitted in the Gulf Oil Corporation special refund proceeding by Nelson L. Capote on behalf of three service stations that he owned. Using the appropriate presumptions of injury, the DOE granted Capote a refund of $5,000 in principal plus $1,719 in interest.

Gulf Oil Corp./Robert A. Lanier, 10/17/89, RF300–10045

The DOE issued a decision and order denying an application for refund submitted by Robert A. Lanier (Lanier) in the Gulf Oil corporation special refund proceeding. Lanier's application was denied because he had already received the maximum refund amount for which he was eligible in a prior decision.

Gulf Oil Corp./Roberts Oil Co., Inc., 10/18/89, RF300–3913, RF300–8114, RF300–8115

The DOE issued a decision and order concerning three applications for refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of Roberts Oil Company, Inc. One application was filed by the Thomas Roberts, the original owner fo Roberts. The other two claims were submitted by Larry H. Jones, the current owner of Robert. Roberts operated as a sole proprietorship from August 1973 to May 1974 when it was incorporated. The OHA awarded Thomas Roberts a refund for the period when Roberts was a sole proprietorship. As the current owner of Roberts' stock, Larry Jones received the refund for Roberts' Gulf purhcases after the firm was incorporated. The three claims were approved under the applicable presumptions of injury. The total refund granted in this Decision was $23,036.

Gulf Oil Corp./S. H. Tevis & Son, Inc., 10/18/89, RF300–5254

The DOE issued a decision and order concerning an application for refund submitted in the Gulf Oil Corporation special refund proceeding by S. H. Tevis & Son, Inc., a consignee and reseller of Gulf refined products. The applicant's refund was granted untilizing the appropriate presumptions of injury. The total refund granted in this decision, including both principal and interest, is $6,719.

Gulf Oil Corp./Sprague Gulf Service, et al., 10/20/89, RF300–10415, et al.

The DOE issued a decision and order concerning 27 applications for refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this decision, including accrued interest, is $46,002.

Gulf Oil Corp./Thomas Gulf, et al., 10/17/89, RF300–2308 et al.

The DOE issued a decision and order concerning four applications for refund submitted in the Gulf Oil Corporation special refund proceeding. Each applicant established that it purchased some or all of its Gulf products indirectly from a Gulf jobber. The jobbers that supplied these four applicants either have not applied in the Gulf proceeding, have not attempted to prove injury, or have already received a refund in the Gulf proceeding under an injury presumption. Accordingly, the four applicants were treated like applicants who purchased directly from Gulf. Each application was approved using a presumption of injury. The sum of the refunds granted in this decision is $4,866.

Gulf Oil Corp./Trailways Lines, Inc., et al., 10/17/89, RF300–10490, et al.

The DOE issued a decision and order concerning four applications for refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using the end-user presumption of injury. The sum of the refunds granted in this decision, including accrued interest, is $189,546.

Luhman's Construction Co., et al., 10/18/89, RF272–41061, et al.

The DOE issued a decision and order granting refunds from crude oil overcharge funds to 22 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this decision is $15,346.

Madison County, et al., 10/18/89, RF272–37310, et al.

The DOE issued a decision and order granting refunds from crude oil overcharge funds to 40 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this decision is $85,488.

Marathon Petroleum Co./Red Diamond Oil Co., 10/18/89 RF250–2421, RF 250–2422

The Department of Energy issued a decision and order considering an application for Refund filed by Red Diamond Oil Company in the Marathon Petroleum Company special refund proceeding. Red Diamond alleged that it had been disproportionately over charged in its purchases of Marathon motor gasoline, because Marathon improperly eliminated a one percent prompt payment discount that it had accorded Red Diamond. The DOE rejected this contention, finding that the firm had not shown that it belonged to a class of purchaser that was entitled to receive the discount. The DOE then considered whether Red Diamond should receive a refund at the full volumetric level of $35,922. The DOE rejected the firm's contention that its reduced profit margins over the course of the refund period established that it was unable to pass through alleged Marathon overcharges, finding instead that the firm had changed its business operations from a small reseller to a large operation and that this fact could account for the reduced margins. The DOE also rejected the firm's position that it had established that it was entitled to a full volumetric refund on the basis of a comparative disadvantage analysis. However, the DOE determined that the results of the comparative disadvantage test did not show that the firm should not receive a 35 percent mid-range presumption refund. Accordingly, the firm was granted a 35 percent mid-range presumption refund of $15,384, including interest, for its Marathon gasoline purchases. The firm also received a 35 percent mid-range presumption refund of $451, including interest, for its Marathon middle distillate purchases.

MCO Holdings, MGPC, Inc./Little America Refining Co., 10/20/89 RF312–6

The DOE issued a decision and order granting in part an application for refund filed by Little America Refining Co. (LARCO) in the MCO Holdings/MGPC, Inc. special refund proceeding. LARCO sought an above-volumetric refund for an alleged overcharge involving the improper pricing of its purchases of butane gasoline mixture (B/G mixture). LARCO presented evidence that it may have been overcharged in its purchases from MGPC. However, LARCO did not demonstrate that these overcharges had a disproportionate effect on it. Furthermore, the DOE determined that these overcharges affected a significant percentage of MGPC's total sales and that other customer's of B/G mixture from MGPC incurred a greater per gallon overcharge. Additionally, the DOE found that LARCO had a negative bank up to and including the entire period for which it alleged that it was overcharged by MGPC. The DOE determined that LARCO was entitled to receive a refund for its purchases of B/G mixture made before the banking regulations went into effect and for indirect purchases of MGPC B/G mixture, for which LARCO did not claim an above-volumetric refund. The total refund approved in this decision was $5,270 ($4,297 principal and $973 interest).

Murphy Oil Corp./Barielle Oil Co., et al., 10/20/89 RF309–838, et al.

The DOE issued a decision and order denying six applications for refund in the Murphy Oil Corporation special refund proceeding. Each applicant purchased Murphy petroleum products on a sporadic basis and was preliminarily identified as a spot purchaser. Since the DOE adopted a presumption of non-injury for spot purchasers in the Murphy refund proceeding and none of the applicants attempted to rebut this presumption, despite the opportunity to do so, the six refund applications were denied.

Murphy Oil Corp./Harbor City Oil Co., 10/18/89 RF309–1000

The DOE issued a decision and order granting Harbor City Oil Company's second application for refund in the Murphy Oil Corporation special refund proceeding. HCO had two Murphy customer accounts, and it was previously granted a refund under the small claims injury presumption. To calculate HCO's refund with respect to the second account, the DOE determined its total eligible refund from both customer accounts under the medium-sized reseller injury presumption and subtracted from that total the $708 refund HCO previously received. The refund granted was $10,846 (comprised of $8,944 in principal and $1,902 in interest).

Murphy Oil Corp./Scotland Oil Company, et al., 10/18/89 RF309–342, et al.

The DOE issued a decision and order granting applications for refund filed by seven applicants, all purchasers of refined petroleum products, in the Murphy Oil Corporation special refund proceeding. Each applicant was found to be injured under the appropriate small claims or mid-level presumption of injury. The total refund approved in this decision was $16,313, representing $13,453 in principal plus $2,860 in accrued interest.

Murphy Oil Corp./System Fuels, Inc., et al., 10/20/89, RF309–936, et al.

The DOE issued a decision and order granting an application for refund filed in the Murphy Oil Corporation special refund proceeding by System Fuels, Inc., a wholly-owned subsidiary of four electric utilities. SFI purchased fuel for the utilities and resold it to them at cost. In the Murphy proceeding, utilities are treated as end-users, but are required to pass through their entire refund to their customers and to report the refund to the appropriate regulatory agency. Accordingly, SFI was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Murphy escrow account and required to pass on the refund to its four parent utilities. They are required in turn to pass on the refund to their customers and notify their regulatory agencies. The refund granted in the decision was $566,738 ($467,374 in principal plus $99,364 in interest).

National Telephone Directory Corp., 10/20/89 RR272–36

The DOE issued a decision and order granting a motion for modification filed by National Telephone Directory Corporation (NTDC) in the subpart V crude oil refund proceedings. NTDC claimed that it was entitled to receive a refund based on purchases of 600,981 gallons of refined products which were not included in its initial filing. The amount of the additional refund granted was $481.

Otter Tail Power Co., 10/20/90 RF272–22583

The DOE issued a decision and order granting a subpart V crude oil refund application filed by Otter Tail Power Company, an electrical utility. Otter Tail had purchased 13,325,832 gallons of petroleum products during 1973–1981, the period of the alleged crude oil overcharges. The applicant had shared ownership in a generating station with Northwest Public Services, a utility which had waived its right and the right of its affiliates to apply for a subpart V crude oil refund, by participating in the Stripper Well refund proceeding. However, since Otter Tail and Northwest were not affiliates, Otter Tail's refund application was not affected by Northwest's waiver. As a utility, Otter tail certified that any refund received would be passed on to its customers and that it would notify the appropriate regulatory body of its receipt of the refund. Accordingly, Otter Tail was granted a refund of $10,661.

Parcel Tankers, Inc., et al., 10/16/89 RF272–0114, et al.

Twenty foreign flagship carriers (Carriers) filed applications for refund from the subpart V crude oil overcharge monies based upon their purchases of marine bunker fuel consumed by the Carriers' vessels for propulsion. A group of thirty States and two Territories of the United States (collectively "the States") filed objections opposing the Applications on the basis that: (1) Bunker fuel sales to the Carriers were "export sales" exempt from price controls and (2) the Carriers were not injured by crude oil overcharges since they conventionally added bunker fuel surcharges to their shipping rates by means of industry regulation and also joined in ratemaking conferences which facilitated the passthrough of increased fuel costs. In considering these refund claims, the DOE determined that the Carriers were end users that were presumptively injured by their purchases, and rejected the States' objections to the Carriers' receiving refunds, based upon determinations reached in *Christian Haaland A/S*, 19 DOE ¶ 85,191 (1989). However, the DOE reduced the amounts of bunker fuel purchases claimed by certain of the Carriers to exclude purchases made in the Panama Canal Zone. On the basis of these determinations, the Carriers' Applications for refund were approved in substantial part. The total of the refunds granted in this decision is $3,089,390.

R.C. Reyer—N. Side Masonery, 10/18/89, RC272–73

The DOE issued a supplemental decision and order rescinding a $16 refund granted to R.C. Reyer—N. Side Masonery because the applicant failed to provide a correct address to which to send the refund.

Roberts TBA Service, Inc., et al., 10/18/89 RF272–52835, et al.

The DOE issued a decision and order, denying 13 applications for refund filed in the subpart V crude oil refund proceedings. Each applicant was either a reseller or a retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that they were injured due to the crude oil overcharges, they were ineligible for a crude oil refund.

Roseburg Lumber Co., 10/18/89, RF272–20331, RD272–20331

The DOE issued a decision and order concerning an application for refund filed by Roseburg Lumber Co., a manufacturer of wood products, in the subpart V crude oil proceeding. A group of States and Territories (the States) objected to Roseburg's application on the ground that certain studies suggested that the lumber and forest products industry in general was able to pass through increased petroleum costs to consumers during the petroleum price controls period. In rejecting that argument and the States motion for discovery, the DOE determined that the States had failed to show that Roseburg itself had passed through increased fuel costs. Accordingly, Roseburg's application was approved and the firm was granted a refund of $36,379.

The Royal Jordanian Airline Corp., 10/11/89, RA272–14

The DOE issued a decision and order correcting a prior crude oil overcharge refund granted to The Royal Jordanian Airline Corporation. The DOE rescinded a $1,079 refund and granted the firm a refund of $15,985.

Shell Oil Co./Bowers Shell Service, et al., 10/20/89, RF315–7000, et al.

The DOE issued a decision and order granting 120 applications for refund in the Shell Oil Company special refund proceeding. The claims were approved under the end-user or small claims injury presumptions. The total of the refunds granted was $139,692 (comprised of $116,142 in principal and $23,550 in interest).

Shell Oil Co./Dix-Dale Shell, ET AL., 10/18/89, RF315–3496, et al.

The DOE issued a decision and order granting 150 applications for Refund in the Shell Oil Company refund proceeding. The claims were approved based on the end-user or small claims injury presumptions. The total of the refund granted was $129,000 (comprised of $107,252 in principal and $21,748 in interest).

Shell Oil Co./Farmington Oil Co., et al., 10/18/89, RF315–2007, et al.

The DOE issued a decision and order granting 38 applications for refund in the Shell Oil Company special refund proceeding. The claims were approved under the end-user or small claims injury presumptions. The total of the refunds granted was $37,860 (comprised of $31,475 in principal and $6,385 in interest).

Wiscassett Mills Co., J.E. Morgan Knitting Mills, Inc., 10/18/89, RF272–15061, RD272–15061, RF272–16340, RD272–16340

The DOE issued a decision and order concerning crude oil overcharge refund applications filed by Wiscassett Mills Co. and J.E. Morgan Knitting Mills, Inc., manufacturers of textile products. A group of States and Territories (the States) objected to the applications on the ground that certain studies suggested that the textile products industry in general was able to pass through increased petroleum costs to consumers during the petroleum price controls period. In rejecting that argument and the States' motions for discovery, the DOE determined that the States had failed to show that Wiscassett or Morgan themselves had passed through increased fuel costs. Accordingly, the applications were approved. Wiscassett was granted a refund of $8,714 and Morgan was granted a refund of $4,426.

Dismissals

The following submissions were dismissed:

Name	Case No.
Adams Oil Co. Liquidating Trust	RF315–2897
Bartilli Service Station	RF307–67
Bill's Exxon	RF307–56
Cumberland Lake Shell, Inc.	RF315–4276
Fox Hall Esso	RF307–8583
J&M Jobbers	RF241–10

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: April 4, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-8414 Filed 4-10-90; 8:45 am]

BILLING CODE 6450-01-M

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for the disbursement of $283,962.91, plus accrued interest, obtained by the DOE under the terms of a consent order entered into with Diamond Industries, Inc. The subsidiaries of Diamond Industries, Inc. involved in this proceeding include Keystone Fuel Oil Company, Diamond Ice & Fuel Co. of Delaware, Diamond Ice & Fuel Co. of Chester, Pennsylvania and Medford-Dunleavy, Inc. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATES AND ADDRESSES: Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to case number KEF-0130.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute $283,962.91 that has been remitted by Diamond Industries, Inc. to the DOE to settle possible pricing violations with respect to certain sales of refined petroleum products by its subsidiary Keystone Fuel Oil Company. Other subsidiaries of Diamond Industries, Inc. that are involved in this proceeding include Diamond Ice & Fuel Co. of Delaware, Diamond Ice & Fuel Co. of Chester, Pennsylvania and Meadford-Dunleavy, Inc. The DOE is currently holding the funds in an interest bearing account pending distribution.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of the publication in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. through 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585. If commentors express sufficient interest in presenting their views orally, the DOE will convene a public hearing. In the event we determine to hold a hearing, notice will be given in the **Federal Register.**

Dated: April 3, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

April 3, 1990.

Name of Firm: Diamond Industries, Inc.

Date of Filing: April 27, 1989.

Case Number: KEF-0130.

On April 27, 1989, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA), requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving Keystone Fuel Oil Company (Keystone), a subsidiary of Diamond Industries, Inc. (Diamond), 10 CFR part 205, subpart V. These procedures will also apply to three other subsidiaries of Diamond. These subsidiaries are Diamond Ice & Fuel Co. of Delaware, Diamond Ice & Fuel Co. of Chester, Pennsylvania and Meadford-Dunleavy, Inc. *See* Footnote 5.

I. Background

Keystone was a "reseller" of No. 2 fuel oil and kerosene as that term was defined in 6 CFR 150.352 and 10 CFR 212.31 and was subject to the DOE Mandatory Petroleum Price Regulations. On the basis of an extensive audit of the firm's pricing practices during the period August 19, 1973 through June 30, 1975 (the Consent Order period), the ERA alleged that Keystone overcharged specific customers in certain sales of No. 2 fuel oil and kerosene and on March 31, 1980 the ERA issues a Proposed Remedial Order (PRO) to Keystone.[1] The PRO alleged that these overcharges amounted to $2,950,026. Keystone vigorously contested the allegations in the PRO in proceedings before the OHA. On March 29, 1984, the ERA submitted to the OHA revised exhibits that recalculated the alleged individual overcharge amounts and thereby reduced the alleged violation amount to $2,782,521. On July 13, 1984 the OHA issued a Remedial Order (RO) which found that Keystone had overcharged forty-three of its customers during the period from August 19, 1973 through April 8, 1974.[2] The RO found that Keystone was in violation of the Mandatory Petroleum Price Regulations in specific sales of 41,349,825 gallons of No. 2 fuel oil and kerosene. Keystone appealed the OHA's determination to the Federal Energy Regulatory Commission (FERC). FERC upheld in part and reversed in part the OHA's decision, and by Order of December 12, 1985 remanded the matter to OHA. *Keystone Fuel Oil Company*, 33 FERC ¶ 61,353 (1985). Keystone and the DOE assert that their respective positions on the outstanding legal issues underlying the RO are meritorious. However, in order to settle the matters in dispute concerning the RO, Keystone and the DOE entered into a Consent Order that became final on July 22, 1986.[3] By

[1] The Commonwealth of Virginia purchased all of the 924,639 gallons of kerosene that were at issue in the PRO and RO. The RO found a total of $305,778 in overcharges on Keystone's sale of kerosene to the Commonwealth of Virginia.

[2] The RO found that Keystone had overcharged these customers for a total of $2,714,453. It appears, from a review of the calculations made in the RO, that the OHA mistakenly subtracted $68,068 from the violation amount. These reductions were for refunds that Keystone had previously made to several of the overcharged customers. It appears that the ERA's March 29, 1989 revised violation amount of $2,782,521 already reflected a reduction of the $68,068. *See Keystone Fuel Oil Company*, 12 DOE ¶ 83,011 at 86,170 (1984); see also PRO Exhibits. However, the ERA should have reduced the alleged violation amount by only $42,721, rather than $68,068, because $25,347 was refunded to a company for violations that were not included in the ERA's revised violations. *See* PRO Exhibits. Accordingly, we believe the actual revised violation amount is $2,807,868.

[3] The Consent Order covers the whole audit period, August 19, 1973 through June 30, 1975. However, all of the alleged violations were found by

Continued

entering into this Consent Order Diamond has made no admission, nor the DOE any finding, that Keystone violated any statute or regulation.

This Proposed Decision and Order concerns the distribution of $283,962.91, plus accrued interest, that Diamond remitted to the DOE for direct restitution to the identified customers found by the RO to have been overcharged.[4] The PRO and the RO identify all of the allegedly overcharged customers as resellers. The appendix attached to this Proposed Decision, sets forth the names of these Keystone customers, the volume purchased and the amount that each customer was allegedly overcharged by Keystone. Accordingly, the potential refund claimants in this proceeding are the customers listed in the appendix of this Proposed Decision.[5]

II. Proposed Refund Procedures

As indicated above, the Keystone customers listed in the appendix of this Proposed Decision (and unknown customers of the three subsidiary firms) constitute the set of potential refund claimants. We therefore propose to consider refund applications only from these customers. Because the Consent Order funds are substantially less than the amount of the violations found by the RO, it is necessary to recalculate each purchaser's potential refund amount. We have calculated the per dollar percentage of the alleged overcharge represented by the Consent Order funds and have multiplied that percentage by the amount of the overcharge allocated to each alleged overcharged customer in the revised exhibits to the PRO. These amounts are listed as the Pro-Rata Share next to each potential claimant's name in the appendix. We recognize that any eligible firm could have been overcharged in amounts greater than the overcharges specified in the Appendix of this Proposed Decision. However, unless an applicant is able to demonstrte that the proportions we used to allocate the Consent Order funds collected is not reflective of the overcharges that it sustained as a result of these specific transactions with Keystone, we do not believe that an applicant should be eligible to receive a refund in an amount greater than it's pro-rate share of the Consent Order funds which was calculated from the violation amounts found by the RO.

The allocation of potential refund amounts to claimants is only the first step in the distribution process. We propose that in order to receive a refund, an applicant must demonstrate that it did not pass on the alleged overcharges to its customers. *E.g., Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396 (1981). As we have done in many prior refund cases, we propose to adopt specific injury presumptions that will simplify and streamline the refund process. These presumptions will excuse members of certain applicant categories from proving that they were injured by Keystone's alleged over charges. We will discuss these presumptions in section II(A) below.

(A) Refund Claimants

(1) Reseller Applicants Seeking Refunds of $5,000 or Less

We propose to adopt a presumption, as we have in many previous cases, that purchasers seeking small refunds were injured by Keystone's pricing practices. *E.g., E.D.G., Inc.*, 17 DOE ¶ 85,679 (1988). We recognize that the cost to the applicant of gathering evidence of injury to support a small refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund. Under the small-claims presumption, a claimant seeking total refunds of $5,000 or less will not be required to submit any evidence of injury beyond establishing that it purchased, during the alleged overcharge period, the volume of Keystone No. 2 fuel oil or kerosene listed for it in the appendix. We propose that applicants seeking refunds in excess of $5,000 must follow the procedures that are outlined below.

(2) Reseller Applicants Seeking Larger Refunds

We propose that if a firm's claim exceeds $5,000, it will be required to provide a detailed demonstration of its injury. We propose that it will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did pass along the alleged overcharges to its own customers. In addition, we propose that a claimant must show that market conditions would not permit it to pass through those increased costs. *E.g. Panhandle Eastern Pipeline Co./I. V. Cole Petroleum Co.*, 10 DOE ¶ 85,051 at 88,265 (1983). If a reseller that is eligible for a refund in excess of $5,000 elects not to submit the cost bank and purchase price information described above, it may still apply for a small claims refund of $5,000, plus accurued interest.

(3) Regulated Firms and Cooperatives

We propose that agricultural cooperatives and regulated firms, such as public utilities, that are required to pass on to their customers the benefit of any refund received will be exempted from the requirement that they make a detailed showing of injury. *E.g., Tenneco Oil Co./Farmland Industries, Inc.*, 9 DOE ¶ 82,597 (1982); *see also Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). Instead those firms or cooperatives will be required to establish that they purchased, during the alledged overcharge period, the volume of Keystone No. fuel oil or kerosene listed for them in the appendix. They must also certify that they will pass any refund received through to their customers, to provide us with a full explanation of the manner in which they plan to accomplish this restitution to their customers and to certify that they will notify the appropriate regulatory or

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the RO to have occurred between August 19, 1973 through April 8, 1974. Because the Consent Order specifically states that it resolves "the dispute between DOE and Keystone * * * concerning the Remedial Order ("RO") issued to Keystone on July 13, 1984 * * *", we believe that only the specific overcharges found by the RO are covered by this Consent Order.

[4] Pursuant to the Consent Order, Diamond agreed to pay $250,000 to the DOE in eighteen monthly installments. On March 20, 1989, Diamond remitted the final payment, bringing the total payment to $283,962.91 in principal and interest to the DOE. This total of $283,962.91, which includes principal and interest accrued on the previously unpaid principal balance, will be treated as principal. Any successful claimants in this proceeding will be awarded a pro-rate share of the $283,962.91, plus a pro-rata share of the interest that has accrued on the remitted funds since October 14, 1986, the date that the first payment was remitted.

[5] Three of the firms found by the RO to have been overcharged are wholly owned subsidiaries of Diamond. These firms are Diamond Ice & Fuel Co. of Delaware, Diamond Ice & Fuel Co. of Chester, Pennsylvania and Medford-Dunleavy, Inc. The OHA considers a parent and subsidiary as the same firm for purposes of a special refund proceeding. Thus, granting a refund to a subsidiary of a Consent Order firm would effectively disburse a portion of the benefit of a refund to the Consent Order firm. Accordingly, we believe that these firms are ineligible for a refund in this proceeding. *E.g., Gulf Oil Corporation/Lewis Oil Company, Inc.*, 18 DOE ¶ 85,133 (1988); *see also Bayside Fuel Oil Depot Corp.*, 13 DOE ¶ 85,139 (1985). We propose that firms that purchased from these three subsidiaries may apply for a refund for gallons of No. 2 fuel oil purchased from these subsidiaries during the Consent Order period. Such claimants may apply using the same presumptions proposed for the customers listed in the appendix. However, these claimants must establish that the volumes of No. 2 fuel oil claimed originated with Keystone or that a given percentage of their No. 2 fuel oil purchases were likely to have originated from Keystone. In addition, such claimants must establish their relative share of a subsidiary's total sales of Keystone No. 2 fuel oil to allow the OHA to determine their appropriate share of the Consent Order funds allocated to that subsidiary.

membership body of the receipt of the refund money. Any public utility claiming a refund of $5,000 or less will not be required to submit the above referenced certifications and explanation. A cooperative's sales of covered product to non-members will be treated in the same manner as sales by other resellers or retailers.

(4) Other Applicants

If one of the firms listed in the appendix of this Proposed Decision (or any customers of the three subsidiaries) was not a reseller, it is still elible to apply for a refund in this proceeding. We propose to adopt a finding that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry, were injured by Keystone's alleged overcharges. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the Consent Order period. Moreover, they were not required to keep records that justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *E.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,450 (1986). We propose, therefore, that if any Keystone customers listed in the appendix is an end-user, it must rebut the RO's finding that it was a reseller and establish that it was an ultimate consumer of Keystone No. 2 fuel oil or kerosene during the alleged overcharge period and establish that it purchased the volume listed in the appendix in order to receive its maximum refund amount.

(B) Distribution of the Remainder of the Consent Order Funds Attributable to Keystone's Sales of No. 2 Fuel Oil and Kerosene

In the event that money remains after all refund claims from the Diamond fund have been analyzed, those funds in that account will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, (PODRA). 15 U.S.C.A. 4501–4507 (West Supp. 1989).

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Diamond Industries, Inc., pursuant to the Consent Order executed on July 22, 1986, will be distributed in accordance with the foregoing decision.

Name	Volume	Alleged overcharge (dollars)	Pro-rata share (dollars)
Bedford County Oil	432,904	20,462	2,069
Bell Fuel Oil	730,311	10,020	1,013
Calypso Coal Storage	46,170	1,372	139
City Coal	563,145	13,433	1,358
Commander	274,663	6,510	658
Commonwealth of Virginia	2,955,753	1,304,970	131,973
Delchester Oil	81,325	1,116	113
Diamond Ice & Fuel Co. of Chester, Pennsylvania[1]	8,678,272	77,091	7,796
Diamond Ice & Fuel Co. of Delaware[1]	4,446,510	48,632	4,918
Energy Inc	2,694,424	77,440	7,832
Great Valley Oil	481,992	14,545	1,471
Hammond & Taylor	74,772	1,080	109
Jones Fuel Oil	587,339	10,844	1,097
Keller's Coal Yard	4,090	237	24
Kent & Sussex Company	54,403	1,578	160
Kirshner Brothers	248,962	6,548	662
Carlos Leffler, Inc	875,455	43,461	4,395
Lehigh Valley Oil Company	61,925	1,593	161
Medford-Dunleavy[1]	1,811,509	22,899	2,316
National Heat and Power	4,198,270	75,925	7,678
A.R. Nikolson	92,312	2,428	246
Paragon Oil	3,170,810	57,392	5,804
Park Oil	24,558	305	31
Penn Independent Oil	24,002	439	44
Pennsylvania Delaware Supply	55,007	633	64
Peoples	384,283	8,877	898
R.J. Peppleman	155,881	2,589	262
Petroleum Heating	51,373	1,672	169
Saber Petroleum Corporation/McBride Trucking	1,375,001	504,488	51,019
R&S Fuel	68,613	1,438	145
Servco Company, Inc	148,616	2,927	296
Smyrna-Clayton Co-op	62,479	1,643	166
Southern States Cooperative	1,284,727	407,130	41,173
Speer Brothers	23,333	236	24
Supreme Petroleum	148,724	892	90
Tauber Oil Company	4,502,240	67,776	6,854
Duffy Tingue	29,138	349	35
Town & Country	73,810	1,579	160
United Fuel	121,368	1,226	124
Vernon & Vernon	139,257	2,351	238
Ralph D. Weaver	41,600	536	54
G. Wolper	24,549	780	79
Wright Fuel Oil	45,950	426	43
Total	41,349,825	$2,807,868	$283,962

[1] Wholly owned subsidiary of Diamond Industries, Inc.

[FR Doc. 90-8415 Filed 4-10-90; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of February 2 Through February 9, 1990

During the Week of February 2 through February 9, 1990, the appeal and the applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. This Notice includes submissions inadvertently omitted from earlier lists.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: April 4, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of February 2 through February 9, 1990]

Date	Name and Location of Applicant	Case No.	Type of Submission
2/2/90	Independent Refining Corporation and Independent Trading Corporation, Houston, TX.	LEF-0009	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the February 11, 1987 Settlement Agreement entered into with Independent Refining Corporation and Independent Trading Corporation.
2/5/90	Lloyd R. Makey, Idaho Falls, ID	LFA-0029	Privacy Act Appeal. If Granted: The January 19, 1990, Privacy Act Request Denial issued by the Privacy Act Officer of the Department of Energy Idaho Operations Office would be rescinded, and Lloyd R. Makey would have his Personal Security File amended.
2/6/90	Economic Regulatory Administration, Washington, D.C.	LRZ-0004	Request for Interlocutory Order. If Granted: The Proposed Remedial Order (PRO) issued to Kenneth Walker and Southwestern States Marketing Corporation would be amended to increase the PRO's overall violation amount and to limit Mr. Walker's personal liability.
2/8/90	Fletcher Oil & Refining Company, Carson, California.	LEF-0010	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the Consent Order entered into with Fletcher Oil & Refining Company, Inc., which was effective August 1, 1983.
2/8/90	Quantum Chemical Corporation, Tuscola, Illinois	LEF-0011	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the March 25, 1988 Consent Order entered into with Quantum Chemical Corporation (formerly National Distillers & Chemical Corporation).

REFUND APPLICATIONS RECEIVED

[Week of February 2 through February 9, 1990]

Date	Name of Applicant	Case No.
08/23/88	Dowdle Butane Gas Co., Inc.	RF307-10100
10/16/89	Jerry Costello	RF307-10099
12/04/89	Ashville Exxon 50526.	RF307-10102
02/02/90	John E. Ditzler	RF272-78453
02/02/90	Edward E. Sunkett	RF307-10097
02/05/90	Vincent L. Owen	RF272-78454
02/05/90	Wayne Lute	RF272-78455
02/05/90	Turner Farms, Inc	RF272-78456
02/05/90	Donald E. Bailey	RF272-78457
02/05/90	Alpine M. Lakes	RF272-78458
02/05/90	Dan Dugan Transport Co.	RF272-78459
02/05/90	Anthony Moster	RF272-78460
02/05/90	Smithfield Exxon	RF307-10098
02/07/90	Contra Costa Exxon	RF307-10101
02/08/90	Nussbaum Farms, Inc.	RF272-78461
02/02/90 thru 02/09/90.	Shell Oil Refund Applications Received.	RF315-9821 RF315-9847
02/02/90 thru 02/09/90.	Gulf Oil Refund Applications Received.	RF300-10987 RF300-10995

REFUND APPLICATIONS RECEIVED—Continued

[Week of February 2 through February 9, 1990]

Date	Name of Applicant	Case No.
02/02/90 thru 02/09/90.	Atlantic Richfield Applications Received.	RF304-11186 RF304-11193

[FR Doc. 90-8416 Filed 4-10-90; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent to Award a Grant to Massachusetts Institute of Technology

AGENCY: U.S. Department of Energy.

ACTION: Acceptance of an Unsolicited Application for a Grant Award.

SUMMARY: The Department of Energy (DOE), Pittsburgh Energy Technology Center announces that pursuant to 10 CFR 600.14 (D) and (E), it intends to award a Grant based on an unsolicited application submitted by the Massachusetts Institute of Technology for "DC CICC Retrofit Magnet Preliminary Design, Protection Analysis and Software Development".

SCOPE: The objectives of this grant are: (1) To provide a preliminary design of a new magnet conductor configuration, whose behavior is quite different from previous designs and whose characteristics offer a potential 50% reduction in the conductor and coal-mass weight and (2) to produce a computer code to analyze its behavior and performance under dynamic conditions.

The overall objective of the MHD magnet program is to prepare the technological and industrial base required for minimum time, cost, and risk implementation of a superconducting magnet for MHD power systems. For the past 30 years, MIT has been conducting research in magnet

technology, yielding successive generations of magnet systems of increasing size. A voluminous, cogent data base has been produced.

In accordance with 10 CFR 600.14 (D) and (E), Massachusetts Institute of Technology has been selected as the grant recipient. DOE support of this activity would enhance the public benefits in that this project will upgrade the efficiency of MHD systems and provide electrical power generation in a more environmentally acceptable manner. This activity represents a unique idea which would not be eligible for financial assistance under a recent, current or planned solicitation. Furthermore, DOE has determined that a competitive solicitation would be inappropriate.

The term of this Grant is for a twenty-four (24) month period at an estimated value of $225,000 which is to be fully funded by the DOE.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236, Attn: Martin Byrnes, Telephone: AC (412) 892–4486.

Dated: March 29, 1990.

Carroll A. Lambton,

Deputy Director, Acquisition and Assistance Division Pittsburgh Energy Technology Center.

[FR Doc. 90–8417 Filed 4–10–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3755–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before May 11, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Wastewater Permit Compliance Assessment Information (ICR no. 1427.02).

Abstract: Facilities discharging effluents into waters of the United States must have a permit to do so, and, once granted a permit, must meet certain conditions for the term of the permit. These conditions include staying within effluent limitations, meeting compliance schedules, and adhering to bypass and upset schedules. A facility must also provide the permitting authority with sufficient documentation to determine that the facility is in compliance with these conditions. The present ICR, a renewal of the expiring ICR 1427.01, addresses this last requirement. Under this ICR specifically, respondents must keep records of all monitoring data readily available should the permitting authority need to consult them. Respondents must also submit Compliance Schedule Reports detailing their progress towards installation of treatment facilities in order to meet discharge limitations. Noncompliance Reports are needed for notification of the permitting authority in the event of an upset or bypass of the treatment system. Alternate Level Reports serve to allow the permitting authority to determine the need to assess compliance given production levels which change substantially from what they were at the time the permit was granted. Finally, this ICR covers the reporting requirements for supplemental information for use in determining the need for enforcement action in oil and hazardous waste spills in U.S. Waters.

Burden Statement: The public reporting burden for this collection of information is estimated to average 2.1 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: All facilities holding National Pollutant Discharge Elimination System permits for the discharge of effluents into waters of the United States.

Estimated No. of Respondents: 91,125.

Estimated Total Annual Burden on Respondents: 194,858 hours.

Frequency of Collection: Variable as needed.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Dated: April 14, 1990.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 90–8398 Filed 4–10–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3754–8]

Science Advisory Board, Environmental Engineering Committee; Leachability Subcommittee Workshop; Open Meeting

Under Pub. L. 92–463, notice is hereby given that the Leachability Subcommittee (LS) of the Science Advisory Board's Environmental Engineering Committee (EEC) will meet May 9–10, in the EPA Education Center Auditorium, Waterside Mall, 401 M Street, SW., Washington, DC 20460. The meeting will begin at 8:30 a.m. on both days and adjourn no later than 6:15 p.m. on Wednesday and 5 p.m. on Thursday.

The purpose of the meeting is to conduct a Workshop and Technical Briefing to review the scientific principles involved with leachability phenomena. The Workshop will be the third meeting held by the LS on this topic. The first meeting was a Planning and Scoping meeting, which was held in Houston, Texas on December 15–16, 1989. The second meeting was held to assess the Environmental Protection Agency's (EPA) needs for leachability-oriented information, and that was held on February 26, 1990, in Washington, DC. Since leachability phenomena is important to many regulatory decisions made by the EPA, it is anticipated that the LS will formulate a resolution on the topic of leachability.

All the technical presentations for the Leachability Workshop will take place on May 9, 1990. On May 10, the LS will conduct a report writing work session to prepare the draft resolution on leachability. During the May 9th Workshop, various experts will be invited to discuss technical topics of interest to the SAB's LS which include the following: Test methods, their descriptions and capabilities for organics and inorganics; leaching of stabilized materials; physical-chemical mechanisms and their concepts on interactions of solids with liquids, liquids with liquids and solid/liquid/gas

configurations; technical problems and challenges for regulators and the regulated; leaching chemistry of organics and inorganics; and alternative approaches to laboratory tests such as modeling. As time permits, other related issues may be discussed.

The meeting is open to the public. Any member of the public wishing further information concerning the workshop should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Ms. Marcy Jolly, Secretary, Science Advisory Board, (A101–F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/382–2552. Seating at the meeting will be on a first come basis.

Dated: April 2, 1990.

Donald G. Barnes,

Director, Science Advisory Board

[FR Doc. 90–8400 Filed 4–10–90; 8:45 am]

BILLING CODE 6560–50–M

[FRFL–3754–9]

Science Advisory Board Executive Committee; Relative Risk Reduction Strategies Committee; Open Meeting

May 15–16, 1990.

Under Public Law 92–463, notice is hereby given that the Relative Risk Reduction Strategies Committee (RRRSC) of the Science Advisory Board is holding a meeting on May 15 from 1 p.m. to 5 p.m. and on May 16 from 8:30 a.m., to 5 p.m. At this meeting (already advertised in the **Federal Register** in January) there will be a special session of the Executive Committee called to attend this RRRSC meeting. The purpose of the meeting is to discuss the progress of the three Subcommittees: Environmental Risk; Relative Risk; and Health Risk and to brief, in depth, the Executive Committee of the SAB. For further information concerning this project, please refer to the notices contained in 54 **FR** 38282, September 15, 1989.

The meetings are open to the public. Any member of the public wishing to attend or submit written comments should notify Joanna Foellmer or Dr. Donald G. Barnes, Science Advisory Board, at 202–382–4126, by one week prior to the meeting date.

Dated: April 2, 1990.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 8399 Filed 4–10–90; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59281A; FRL 3733–8]

Certain Chemical; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test marketing exemption (TMEs) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TME–90–6, TME–90–7, and TME–90–8. The test marketing conditions are 0described below.

EFFECTIVE DATES: April 2, 1990.

FOR FURTHER INFORMATION CONTACT: Andrea Pfahles-Hutchens, New Chemicals Branch, Chemcial Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, DC 20460 (202) 382–2255.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–90–6, TME–90–7, and TME–90–8. EPA has determined that test marketing of the new chemical sustances described below, under the conditions set out in the TME applications, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of custormers must not exceed that specified in the application and in this notice must be met.

The following additional restrictions apply to TME–90–6, TME–90–7, and TME–90–8:

1. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME.

2. The Company is prohibited from any predictable or purposeful release of the TME substance into the waters of the United States.

3. The applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

a. Records of the quantity of the TME substances produced and the date of manufacture.

b. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

c. Copies of the bill of lading that accompanies each shipment of the TME substance.

d. Records documenting establishment and implementation of procedures that ensure compliance with the prohibition against release of the TME substances into waters of the United States.

TME–90–6

Date of Receipt: February 13, 1990.

Notice of Receipt: March 12, 1990 (55 FR 9214).

Applicant: Confidential.

Chemical: Substitued triphenylmethane (G).

Use: A component of the material for integrated circuit fabrication (G).

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: One year from the effective date of the TME.

Risk Assessment: EPA identified concerns for neurotoxicity, kidney, liver and blood toxicity, and environmental toxicity based on test data on analogous substances. However, during processing and use there will be low exposures to workers due to the automation of the processing, and the lack of releases to water will mitigate the environmental concerns. Therefore, the test market activities will not present an unreasonable risk of injury to health or the environment.

TME–90–7

Date of Receipt: February 13, 1990.

Notice of Receipt: March 12, 1990 (55 FR 9214).

Applicant: Confidential.

Chemical: Substitued triphenylmethane (G).

Use: A component of the material for integrated circuit fabrication (G).

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: One year from the effective date of the TME.

Risk Assessment: EPA identified concerns for neurotoxicity, kidney, liver and blood toxicity, and environmental toxicity based on test data on analogous substances. However, during processing

and use there will be low exposures to workers due to the automation of the processing, and the lack of releases to water will mitigate the environmental concerns. Therefore, the test market activities will not present an unreasonable risk of injury to health or the environment.

TME-90-8

Date of Receipt: February 13, 1990.

Notice of Receipt: March 12, 1990 (55 FR 9214).

Notice of Receipt: March 12, 1990 (55 FR 9214).

Applicant: Confidential.

Chemical: Substitued triphenylmethane (G).

Use: A component of the material for integrated circuit fabrication (G).

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: One year from the effective date of the TME.

Risk Assessment: EPA identified concerns for neurotoxicity, kidney, liver and blood toxicity, and environmental toxicity based on test data on analogous substances. However, during processing and use there will be low exposures to workers due to the automation of the processing, and the lack of releases to water will mitigate the environmental concerns. Therefore, the test market activities will not present an unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention which casts significant doubt on its finding that the test marketing activities will not present any reasonable risk of injury to health or the envrionment.

Dated: April 2, 1990.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 90-8380 Filed 4-10-90; 8:45 am]

BILLING CODE 6560-50-D

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

April 4, 1990

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037 For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0318

Title: Notification of Status of Facilities Under Part 22 of FCC Rules

Form Number: FCC Form 489

Action: Extension

Respondents: Businesses or other for-profit (including small businesses)

Frequency of Response: On occasion

Estimated Annual Burden: 2,067 Responses; 7,490 Hours

Needs and Uses: Common carriers file FCC Form 489 to notify the Commission that they have finished construction and/or made minor modifications to their facilities. The reporting requirement is necessary in order to efficiently manage the spectrum and to ensure that it is effectively utilized and to properly assign frequencies to carriers on an interference free basis within their service areas.

OMB Number: 3060-0319

Title: Application for Assignment or Transfer of Control

Form Number: FCC Form 490

Action: Extension

Respondents: Busines or other for-profit (including small businesses)

Frequency of Response: On occasion

Estimated Annual Burden: 1,000 Responses; 3,000 Hours

Needs and Uses: FCC Form 490 is required of common carriers to approve the sale of a common carrier station and the qualifications of the new carrier the license is being assigned to or the qualifications of the new entity acquiring control of the previous licensee. The information will be used by FCC staff to determine eligibility of the common carrier. Without such information the Commission could not determine whether to issue a license or renewal.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-8284 Filed 4-10-90; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

April 4, 1990

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501-3520).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037. Persons wishing to comment on these information collections should contact Eyvette Flynne, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: 3060-2045

Title: Section 74.537, Temporary authorizations

Action: Extension

Respondents: Business (including small businesses)

Frequency of Response: On occasion

Estimated Annual Burden: 10 responses; 20 hours total annual burden; 2 hours average burden per response

Needs and Uses: This rule requires licensees of aural broadcast studio transmitter link (STL) or intercity relay stations to file informal requests for special temporary authorization for operations of a temporary nature. The information is used by Commission staff to ensure that temporary operations will not cause interference to existing stations.

OMB Number: 3060-0243

Title: Section 74.551, Equipment changes

Action: Extension

Respondents: Business (including small businesses)

Frequency of Response: On occasion

Estimated Annual Burden: 35 responses; 35 hours total annual burden; 1 hour average burden per response

Needs and Uses: This rule requires licensees of aural broadcast studio transmitter link (STL) or intercity relay stations to notify the Commission in writing of minor equipment changes upon completion of such changes. The information is used by FCC staff to ensure that changes comply with the rules and regulations.

OMB Number: 3060-0320

Title: Section 73.1400, Remote control authorizations
Action: Extension
Respondents: Business (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 121 responses; 73 hours total annual burden; 0.6 hour average burden per response
Needs and Uses: This rule requires licensees of all broadcast stations operating by remote control at places other than main studio or transmitter site locations to send written notifications to FCC. The information is used by FCC staff to ensure that the location will not cause interference to other stations.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-8285 Filed 4-10-90; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for renewal of license of Station WCBM(AM), Baltimore Maryland, and for a New AM Station at Baltimore, Maryland, and an application for consent to the assignment of license of WCBM(AM), Baltimore Maryland.

	Applicant	City/State	File No.	MM Docket No.
A.	Bennett Gilbert Gaines, Interlocutory Receiver for Magic 680, Inc., WCBM(AM)	Baltimore, MD	BR-88083OUA BAL-881117EB	90-125
B.	WCBM Maryland, Inc. (Assignee)	Baltimore, MD	BAL-881117EB	
C.	Lifestyle Broadcasting, Inc	Baltimore, MD.	BP-880831AD	
D.	Mount Vernon Broadcasting	Baltimore, MD.	BP-880901AD	

2. Pursuant to section 903(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each issue has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading	Applicant(s)
1. Site Availability	C, D
2. Comparative	A, B, C, D
3. Ultimate	A, B, C, D

3. If there is any non standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 90-8354 Filed 4-10-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system described below.

Type of Review: Extension of expiration date without any change in substance or method of collection.
Title: Application pursuant to Section 19 of the Federal Deposit Insurance Act.
Form Number: FDIC 6710.07.
OMB Number: 3064-0018.
Expiration Date of OMB Clearance: June 30, 1990.
Frequency of Response: On occasion.
Respondents: Insured depository institutions.
Number of Respondents: 90.
Number of Responses Per Respondent: 1.
Total Annual Responses: 90.
Average Number of Hours Per Response: 16.
Total Annual Burden Hours: 1,440.
OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted before June 11, 1990.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend, for a three-year period, the use of Form FDIC 6710/07, Application Pursuant to Section 19 of the Federal Deposit Insurance Act. The current clearance for the form expires on June 30, 1990. There is no change in the method of substance of the collection.

Section 19 of the FDI Act (12 U.S.C. 1829) requires the FDIC's consent prior to any participation in the affairs of an insured depository institution by a person who has been convicted of crimes involving dishonesty or breach of trust. To obtain that consent, an insured depository institution must submit an application to the FDIC for approval on Form FDIC 6710/07.

Dated: April 4, 1990.

Federal Deposit Insurance Corporation.

[FR Doc. 90-8330 Filed 4-10-90; 8:45 am]

BILLING CODE 6714-01-M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified below.

Type of Review: Extension of expiration date without any change in substance or method of collection.

Title: Notice of Acquisition of Control.

Form Number: FDIC 6822/01.

OMB Number: 3064–0019.

Expiration Data of Current OMB Clearance: June 30, 1990.

Frequency of Response: On occasion.

Respondents: Persons proposing to acquire ownership control of insured State nonmember banks.

Number of Respondents: 89.

Number of responses Per Respondent: 1.

Total Annual Responses: 89.

Average Number of Hours Per Response: 30.

Total Annual Burden Hours: 2,670.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submited on or before June 11, 1990.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The Federal Deposit Insurance Act (12 U.S.C. 1817(j)) and the FDIC rules and regulations (12 CFR 303.4) require that any person proposing to acquire ownership control of an insured State nonmember bank provide sixty days prior written notice to the FDIC. Such notification is made on Form FDIC 6822/01 and is subject to disapproval if the FDIC determines the ownership control is not in the public interest.

Dated: April 4, 1990.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90–8331 Filed 4–10–90; 8:45 am]

BILLING CODE 6714–01–M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paper Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system described below.

Type of Review: Extension of expiration date without any change in substance or method of collection.

Title: Foreign Branch Report of Condition.

Form Number: FFIEC 030.

OMB Number: 3064–0011.

Expiration Date of OMB Clearance: June 30, 1990.

Frequency of Response: Annually.

Respondents: Foreign branches of insured State nonmember banks.

Number of Respondents: 55.

Number of Responses Per Respondent: 1.

Total Annual Responses: 55.

Average Number of Hours Per Response: 3.

Total Annual Burden Hours: 165.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted before June 11, 1990.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Sections 18(d)(1) and (2) of the FDI Act require the FDIC's consent prior to the establishment and operation of foreign branches by insured State nonmember banks "upon such condition and pursuant to such regulations as the Corporation may prescribe." Section 347.6(b) of the FDIC rules and regulations requires nonmember banks to "submit an annual report of condition for each foreign branch."

Dated: April 4, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90–8332 Filed 4–10–90; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: New Collection.

Title: FEMA Contract Clause—Accessibility of Meetings to Persons with Disabilities.

Abstract: Contractors who plan meetings, conferences, or seminars for FEMA must develop a plan to assure that minimum accessibility standards for the disabled as set forth in the contract clause will be met. The plan must be approved by the FEMA Contracting Officer.

Type of Respondents: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimate of Total Annual Reporting and Recordkeeping Burden: 30 Hours.

Number of Respondents: 10.

Estimated Average Burden Hours Per Response: 3 Hours.

Frequency of Response: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman,

(202) 395–7231, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: April 4, 1990.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 90–8384 Filed 4–10–90; 8:45 am]

BILLING CODE 6718–01–M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Reinstatement of 3067–0151.

Title: Progress Report.

Abstract: Public Assistance grants are awarded to States eligible for Federal disaster assistance. The regulation entitled "Uniform Requirements for Grants and Cooperative Agreements to State and Local Governments," published at 44 CFR part 13, places certain requirements on the State in its role as grantee for the Public Assistance Program, which includes monitoring and reporting program/project performance. The intent of the regulation is to allow States more discretion in administering Federal programs in accordance with their own procedures and thereby simplify the program and reduce delays, and awarding subgrants to local governments. States are required to submit progress reports on a quarterly basis which describes the status of those projects and any problems or circumstances expected to result in noncompliance with the approved grant conditions.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 125 Hours.

Number of Respondents: 25.

Estimated Average Burden Hours of Per Response: 1.

Frequency of Response: Quarterly.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395–7231, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: April 2, 1990.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 90–8385 Filed 4–10–90; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–861–DR]

Alabama; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama (FEMA–861–DSR), dated March 21, 1990, and related determinations.

DATED: March 30, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Alabama, dated March 21, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 21, 1990:

The counties of Baldwin, Clay, Macon, Russell, and Tallapoosa for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90–8386 Filed 4–10–90; 8:45 am]

BILLING CODE 6718–02–M

Florida; Major Disaster and Related Determinations

FEMA–862–DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–862–DR), dated April 3, 1990, and related determinations.

DATED: April 3, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that, in a letter dated April 3, 1990, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93–288, as amended by Public Law 100–707), as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from severe storms and flooding beginnig on March 16, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate form funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be provided at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facilty and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Alfred A. Hahn of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this delcared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

The counties of Bay, Calhous, Escambia, Gulf, Holmes, Okaloosa, Santa Rosa, Walton, and Washington for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 90–8387 Filed 4–10–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA-857-DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA-857-DR), dated February 23, 1990, and related determinations.

DATED: March 30, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Georgia, dated February 23, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 23, 1990:

The counties of Henry, Marion, and Webster for Individual Assistance and Public Assistance; and

The counties of Baker, Lee, and Monroe for Individual Assistance only.

Grant C. Peterson,

Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

[FR Doc. 90-8388 Filed 4-10-90; 8:45 am]

BILLING CODE 6718-02-M

Mississippi; Amendment to Notice of a Major Disaster Declaration

[FEMA-859-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA-859-DR), dated February 28, 1990, and related determinations.

DATED: April 3, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the announcement closing the incident period for this disaster on March 5, 1990, is rescinded. The incident for this disaster is amended to read, beginning on January 24, 1990, through and including March 15, 1990.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-8390 Filed 4-10-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-859-DR]

Mississippi; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA-859-DR), dated February 28, 1990, and related determinations.

DATED: April 3, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Mississippi, dated February 28, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 28, 1990:

The counties of Copiah, George, Greene, Harrison, Jackson, Kemper, Lincoln, Madison, and Marion for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-8389 Filed 4-10-90; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200344.

Title: Port of Oakland/Stevedoring Services of America Management Agreement.

Parties: Port of Oakland (Port) Stevedoring Services of America (SSA).

Synopsis: The Agreement provides SSA with a non-exclusive right to perform management, terminal operations and cargo solicitation services at the Port's Charles P. Howard Terminal (Berths 67, 68 and 69). SSA will also utilize three container cranes on the premises at uniform rates established by the Port. SSA receives from the Port 12½% of gross wharfage and dockage tariff revenues as consideration for its services and an additional $5.00 per 20-foot equivalent unit ("TEU") for each loaded TEU arising from new shipping line cargo activity. The term of the Agreement is two years from April 2, 1990 to June 30, 1992. Agreement No. 224-010642 between the Port and SSA covering the facility.

Agreement No.: 224-200343.

Title: South Carolina State Ports Authority/Maersk, Inc. Terminal Agreement.

Parties: South Carolina State Ports Authority (Authority), Maersk, Inc. (Maersk).

Synopsis: The Agreement allows Maersk to rent container handling equipment at 85 percent of the Authority's tariff rate for use in Maersk's container maintenance operation.

Agreement No.: 224-200274-002.

Title: Port of Oakland/Pasha Properties, Inc. Terminal Agreement.

Parties: Port of Oakland, Pasha Properties, Inc.

Synopsis: The Agreement suspends the term and the compensation payments due under the basic agreement during the repair of earthquake damage to the assigned premises until the facility can berth vessels and the wharf facilities can be used.

By Order of the Federal Maritime Commission.

Dated: April 5, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-8358 Filed 4-10-90; 8:45 am]

BILLING CODE 6730-01-M

Fact Finding Investigation No. 16 Possible Malpractices in the Trans-Atlantic Trades; Order Extending Investigation

April 5, 1990.

By Order issued April 9, 1987 (52 FR 12064, April 14, 1987), the Federal Maritime Commission instituted this non-adjudicatory investigation into the practices of rebates, concessions, absorptions and allowances in excess of those set forth in applicable tariffs, and any other devices or means of obtaining, providing, or allowing other persons to obtain transportation of property at less, or different compensation that the rates and charges shown in applicable tariffs or service contracts, in the United States foreign commerce, between ports and points, in the Trans-Atlantic Trades. By Order issued June 10, 1988 (53 FR 22385, June 15, 1988) the term of this investigation was extended to April 14, 1989 and by Order issued May 1, 1989 (54 FR 19436, May 5, 1989), the term of this investigation was further extended to April 14, 1990. The Investigative Officer has now advised that in order to complete ongoing fact finding activities it is necessary to extend this investigation an additional year.

Therefore, it is ordered, That the Investigative Officer shall issue a final report of findings and recommendations to the Commission on or before April 14, 1991, such report to remain confidential unless and until the Commission rules otherwise.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-8283 Filed 4-10-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Creditanstalt-Bankverein, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 30, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Creditanstalt-Bankverein, Vienna, Austria; to engaged *de novo* through its subsidiary, HKW Asset Management, Inc., New York, New York, in providing investment and financial advisory services pursuant to section 225.25(b)(4) of the Board's Regulation Y. These activities will be conducted worldwide.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 100 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Synovus Financial Corp., Coumbus, Georgia; to engage *de novo* through its subsidiary Synovus Securities, Inc., Columbus, Georgia, in consumer financial counseling services pursuant to section 225.25(b)(20) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 5, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-8351 Filed 4-10-90; 8:45 am]

BILLING CODE 6210-01-M

Mid-South Bancorp, Inc.; Correction

This notice corrects a previous **Federal Register** Notice (FR Doc. 90-7163) published as page 11652 of the issue for Thursday, March 29, 1990.

Under the Federal Reserve Bank of St. Louis, the entry for Mid-South Bancorp, Inc., is amended to read as follows:

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. Mid-South Bancorp, Inc., Franklin, Kentucky; to acquire at least 93.4 percent of the common voting shares and at least 84.1 percent of the preferred shares of The Peoples Bank of Elk Valley, Fayetteville, Tennessee.

Comments on this application must be received by April 13, 1990.

Board of Governors of the Federal Reserve System, April 5, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-8352 Filed 4-10-90; 8:45 am]

BILLING CODE 6210-01-M

Ohio Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 C.F.R. 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 30, 1990.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Ohio Bancorp, Youngstown, Ohio; to acquire 100 percent of the voting shares of The McKinley Bank, Niles, Ohio.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. NBN Corporation, Newport, Tennessee; to acquire 100 percent of the voting shares of First Peoples Bancorp, Inc., Jefferson City, Tennessee, and thereby indirectly acquire First Peoples Bank of Jefferson County, Jefferson City, Tennessee.

Board of Governors of the Federal Reserve System, April 5, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-8353 Filed 4-10-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN MARCH 19, 1990 AND MARCH 30, 1990

Name of acquiring person; name of acquired person; name of acquired entity;	PMN No.	Date terminated
American Telephone & Telegraph; Encore International, Inc.; Encore International, Inc	90-1034	03/19/90
Sutter Health; Merritt Peralta Medical Center; Delta Memorial Hospital	90-1040	03/19/90
Indiana Energy, Inc.; Hulman & Company; Terre Haute Gas Corporation	90-1051	03/19/90
Hulman & Company; Indiana Energy, Inc.; Indiana Energy, Inc	90-1052	03/19/90
Indiana Energy, Inc.; Richmond Gas Corporation; Richmond Gas Corporation	90-1053	03/19/90
Burlington Resources Inc.; Chevron Corporation; Chevron U.S.A. Inc	90-1074	03/19/90
Joji Nakano; Bayview Plaza Associates, Ltd.; Bayview Plaza Associates, Ltd	90-1123	03/19/90
Bernard F. Brennan; CalFed Inc.; Beneficial Standard Life Insurance Company	90-1092	03/20/90
Kyotaru Co., Ltd.; Restaurant Associates Industries, Inc.; Restaurant Associates Industries, Inc	90-1111	03/20/90
Carey Salt Holdings, Inc.; Domtar, Inc.; Domtar, Inc	90-1125	03/20/90
NCR Corporation; Teradata Corporation; Teradata Corporation	90-1033	03/21/90
Independent Insurance Group, Inc.; Conseco, Inc.; Lincoln Income Life Insurance Company	90-1139	03/22/90
The Morgan Stanley Leveraged Equity Fund II, L.P.; Waterford Wedgwood plc; Waterford Wedgwood plc	90-1116	03/23/90
Federal Express Corporation; BRNF Liquidating Trust; BRNF Liquidating Trust	90-1124	03/23/90
Mark IV Industries, Inc.; Brunswick Corporation; Vapor Corporation	90-1087	03/26/90
Midland Financial Co.; First Western Corporation; First Western Corporation	90-1093	03/26/90
The Bank of New York Company, Inc.; Bankers Trust New York Corporation; BT Factors	90-1097	03/26/90
Winton M. Blount; Ronald O. Perelman; Dixon Industries, Inc	90-1099	03/26/90
General Motors Corporation; Texas Air Corporation; System One Holdings Inc. d/b/a System One Corporation	90-1105	03/26/90
Solvay & Cie S.A.; The Dexter Corporation; Research Polymers International Corporation	90-1115	03/26/90
Swiss Reinsurance Company; PREINCO Holdings, Inc.; PREINCO Holdings, Inc	90-1117	03/26/90
American International Group, Inc.; PREINCO Holdings, Inc.; PREINCO Holdings, Inc	90-1118	03/26/90
PREINCO Holdings, Inc.; Transatlantic Reinsurance Company; Transatlantic Reinsurance Company	90-1119	03/26/90
D. Patrick Curran; Georgia Gulf Corporation; Freeman Chemical Corporation	90-1127	03/26/90
Total Compagnie Francaise des Petroles, S.A.; Georgia Gulf Corporation; Freeman Chemical Corporation	90-1128	03/26/90
Chiles-Alexander International, Inc.; Grosvenor Holdings Limited; Grosvenor Holdings Limited	90-1137	03/26/90
Lucas Industries plc; Lockheed Corporation; Metier, Inc	90-1143	03/26/90
Thomas H. Lee; CST Office Products Corp.; CST Office Products Corp	90-1144	03/26/90
Den Danske Bank af 1871, Aktieselskab; Provinsbanken A/S; Provinsbanken A/S	90-1148	03/26/90
Den Danske Bank af 1871, Aktieselskab; Copenhagen Handelsbank A/S; Copenhagen Handelsbank A/S	90-1149	03/26/90
Daido Mutual Life Insurance Company; PREINCO Holdings, Inc.; PREINCO Holdings, Inc	90-1151	03/26/90
Thomas H. Lee; Lee-CST Holding Corporation; Lee-CST Holding Corporation	90-1152	03/26/90
Metropolitan Life Insurance Company; PREINCO Holdings, Inc.; PREINCO Holdings, Inc	90-1155	03/26/90
Compagnie Financiere et de Reassurance du Groupe AG; PREINCO Holdings, Inc.; PREINCO Holdings, Inc	90-1156	03/26/90
The Nichido Fire & Marine Insurance Company, Limited; PREINCO Holdings, Inc.; PREINCO Holdings, Inc	90-1157	03/26/90
General Re Corporation; PREINCO Holdings, Inc.; PREINCO Holdings, Inc	90-1158	03/26/90
Amoco Corporation; L.H & M.S. Singletary; Sing Industries, Inc	90-1076	03/27/90
Winterthur Swiss Insurance Company; Reliance Group Holdings, Inc.; General Casualty Company of Wisconsin	90-1159	03/27/90
Lee Enterprises, Incorporated; Cowles Media Company; Rapid City Journal Company	90-1079	03/28/90
Sam Fox; Pullman Partners; Peabody Floway, Inc	90-1081	03/28/90
Harbour Group Investments L.P.; Pullman Partners; Peabody Barnes Inc	90-1082	03/28/90
Gannett Co., Inc.; Cowles Media Company; Great Falls Tribune Company	90-1095	03/28/90
Morton International, Inc.; Whittaker Corporation; Whittaker Corporation	90-1126	03/28/90
Primerica Corporation; Barclays PLC; The Citadel Life Insurance Company	90-1153	03/28/90
James P. Lennane; Scitex Corporation Ltd.; Scitex Corporation Ltd	90-1039	03/29/90
Willis J. Mullet; Harsco Corporation; Kinnear Division	90-1070	03/29/90
James A. Pattison; Anderson News Corporation; Anderson News Corporation	90-1085	03/29/90
Anderson News Corporation; James A. Pattison; Great Atlantic News Company, Inc	90-1086	03/29/90
Nestor-BNA plc; Norman Thoms and Irene Thoms; Medical Recruiters of America, Inc	90-1171	03/29/90
Banc One Corporation; AARP Federal Credit Union; AARP Federal Credit Union	90-1178	03/29/90
Ken Mizuno; John Curci; Indian Wells Country Club	90-1103	03/30/90
MNC Financial, Inc.; First American Corporation; First American National Bank	90-1168	03/30/90

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN MARCH 19, 1990 AND MARCH 30, 1990—Continued

Name of acquiring person; name of acquired person; name of acquired entity;	PMN No.	Date terminated
Trusthouse Forte PLC; Committee of Management of the Mineworkers' Pension Scm; Watergate Hotel	90-1201	03/30/90
Trusthouse Forte PLC; British Coal Staff Superannuation Scheme Trustees Ltd.; Watergate Hotel	90-1202	03/30/90
ML Media Opportunity Partners, L.P.; Malcolm I. Glazer; Avant Development Corporation	90-1206	03/30/90
Craig O. McCaw; Steven J. Simmons; Simmons Cellular of Washington, Inc.	90-1210	03/30/90
Hiroshi Tanaka; Ssangyong Cement Industrial Co., Ltd.; Ssangyong/SSC Partners	90-1218	03/30/90

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Federal Trade Commission, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-8374 Filed 4-10-90; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. D-9198]

Midcon Corp., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This final order adopts the initial decision in full, dismissing the complaint because of a failure to prove the likelihood of a substantial lessening of competition in a section of the country.

DATES: Complaint issued September 19, 1985. Final Order issued July 18, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Marc Schildkraut, FTC/S-3302, Washington DC 20580. (202) 326-2622.

(Sec. 6, Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Commissioners: Daniel Oliver, Chairman; Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Margot E. Machol.

Final Order

This matter having been heard on the appeal of complaint counsel from the initial decision and on briefs and oral argument in support of and in opposition to the appeal, for the reasons stated in the accompanying opinion, the Commission has determined to deny the appeal. Accordingly,

[1] Copies of the complaint, initial decision, opinion of the Commission, Statements, etc. are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

It is ordered that the complaint is dismissed.

By the Commission, Commissioner Machol not participating.

Donald S. Clark,

Secretary.

[FR Doc. 90-8373 Filed 4-10-90; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Federal Supply Service (FWA), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0242, Use of Electric Data Interchange to Document and Pay Transportation Bills. This information is for use by carriers in billing charges for freight, express, or passenger transportation furnished the U.S. Government.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th and F Streets NW., Washington, DC 20405.

Annual Reporting Burden: Although the number of firms responding is not known, approximately 2.5 million SF 1113's are filed per year, taking approximately 20,883 hours to complete. However, information provided on the SF 1113 is the same as that supplied to commercial clients using commercial freight bills. An analysis of 83 private industry vouchers revealed an average of 14 data elements per voucher. The SF 1113 has only 10 data elements. The Government supplies most of the information for the GBL. Therefore, the Government forms are less burdensome to industry than use of private industry vouchers.

FOR FURTHER INFORMATION CONTACT: John W. Standfort, (202) 786-3065.

Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), room 3014, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 535-7691, or by faxing your request to (202) 786-9027.

Dated: March 28, 1990.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 90-8341 Filed 4-10-90; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0129]

Public Meeting; Sunglasses Intended to Protect Against Ultraviolet Radiation; Discussion of New Information About the Dangers of Ultraviolet Radiation and New Interpretations of Existing Data

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to gather new information and views on the role of sunglasses in providing protection of the eyes against ultraviolet radiation exposure.

DATES: The open meeting will be held on Monday, April 23, 1990, 9 a.m. to 5 p.m. Interested persons, whether or not they are able to attend the meeting, may submit written comments on the issues described in this notice at any time.

ADDRESSES: The meeting will be held at the Parklawn Bldg., Conference Rm. E, 5600 Fishers Lane, Rockville, MD 20857. Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600

Fishers Lane, Rockville, MD 20857. Comments should be identified with the docket number found in brackets in the heading of this notice.

FOR FURTHER INFORMATION CONTACT: F. Alan Andersen, Center for Devices and Radiological Health (HFZ–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2444.

SUPPLEMENTARY INFORMATION: FDA develops and carries out a national program to ensure the safety and effectiveness of medical devices through the Center for Devices and Radiological Health. Under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), FDA has classified nonprescription sunglasses as a class I medical device (21 CFR 886.5850).

The American National Stanards Institute (ANSI) has developed a consensus standard regarding the performance levels and labeling of sunglasses depending upon their intended use. To further help consumers understand the labeling of sunglasses and to provide additional information, the Sunglass Association of America (SAA), with the cooperation of FDA, has developed a labeling policy for its members that includes product labels and also provides point-of-sale brochures with detailed instructions. The ANSI standard and the SAA labeling policy are available for public examination at the Dockets Management Branch (address above).

To address any new information about the dangers of ultraviolet radiation, as well as new interpretations of existing data, FDA believes that it is reasonable to provide an opportunity for ophthalmologists, optometrists, sunglass manufacturers, consumers, and other interested persons to discuss the dangers of ultraviolet radiation exposure of the eyes and to assess the impact of this information on existing sunglasses' labeling.

Accordingly, FDA is inviting interested persons to attend the meeting and submit written comments to the Dockets Management Branch (address above). Minutes of the meeting will be made publicly available.

Dated: April 5, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for regulatory Affairs.

[FR Doc. 90–8361 Filed 4–10–90; 8:45 am]

BILLING CODE 4160–01–M

Office of Refugee Resettlement

Refugee Resettlement Program; Proposed Allocations to States of FY 1990 Funds for Refugee Social Services

AGENCY: Office of Refugee Resettlement (ORR), FSA, HHS.[1]

ACTION: Notice of proposed allocations to States of FY 1990 funds for refugee social services.

ADDRESSES: Address written comments, in duplicate, to: Toyo Biddle, Office of Refugee Resettlement, Family Support Administration, 370 L'Enfant Promenade, SW. Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle (202) 252–4563.

SUMMARY: This notice proposes the allocations to States of FY 1990 funds for social services under the Refugee Resettlement Program (RRP).

DATES: Comments on the allocations provided for in this notice will be considered if received by May 11, 1990.

SUPPLEMENTARY INFORMATION:

I. Amounts Proposed for Allocation

The Office of Refugee Resettlement (ORR) expects to have available $75,000,000 in FY 1990 refugee social service funds as part of the FY 1990 appropriations for the Department of Health and Human Services (Pub. L. 101–166).

Of the total of $75,000,000, the Director of ORR proposes to make available to States $63,000,000 (84%) under the allocation formulas set out in this notice. These funds would be made available for the purpose of providing social services to refugees. The allocation amounts proposed in this notice could be adjusted slightly in the final notice after taking into consideration any population adjustments (see Section VI. below).

The population figures include refugees, Cuban/Haitian entrants, and Amerasians from Vietnam since these populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program in order to use funds on behalf of entrants as well as refugees.)

Of the $63,000,000 covered by this notice, the Director proposes to allocate funds directly to States in the following manner:

- $60,000,000 would be allocated on the basis of each State's proportion of the national population of refugees who had been in the U.S. 3 years or less as of October 1, 1989 (including a floor amount of $75,000 for States which have small refugee populations).
- $3,000,000 would be allocated on the basis of each State's proportion of the 3-year refugee population (including a floor amount of $5,000 to States with small refugee populations) in order to provide an incentive for States to fund refugee mutual assistance associations (MAAs). A written assurance that these optional funds will be used for MAAs is required in order for a State to receive the funds. Guidance to States regarding this assurance is provided below.

The use of the 3-year population base in the allocation formula is required by section 6(a)(3) of the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605) which amended section 412(c) of the Immigration and Nationality Act (INA) to require that the "funds available for a fiscal year for grants and contracts [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

The $12,000,000 in remaining social service funds is expected to be used by ORR on a discretionary basis to provide funds for individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program. The discretionary funds would support specific program activities designed to improve the delivery of services to refugees. Announcements of the availability of funding and grant application procedures for some projects have been issued: Availability of Funding for Grants to States to Implement Favorable Alternate Sites

[1] In addition to persons admitted to the United States as refugees under section 207 of the Immigration and Nationality Act (INA) or granted asylum under section 208 of the INA, eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202); and (3) certain Amerisians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Pub. L. 100–461). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the social service program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival.

Demonstration Projects, Memorandum to State Refugee Coordinators issued October, 1984, and Availability of Funding for Planned Secondary Resettlement of Refugees, 50 FR 20038, May 13, 1985. ORR expects to continue emphasis on discretionary grants to address problems of persistent welfare dependency and to promote favorable resettlement opportunities. Announcements will be made when discretionary initiatives are decided on. The amount proposed for the discretionary use would enable valuable current efforts—such as the Key States Initiative, Job Links, Planned Secondary Resettlement, and services for Amerasians from Vietnam—to be continued as appropriate. At the same time, it would provide funds to enable ORR to address such additional needs as serious problems of dependency in areas not currently served by special projects, the need for the placement of greater numbers of newly arriving refugees in locations favorable to their employment and self-support, and the service needs of former re-education camp detainees from Vietnam.

Although the allocation formula is based on the 3-year refugee population, social service programs are not limited to refugees who have been in the U.S. only 3 years. States may provide services without regard to an individual refugee's length of residence, in accordance with the requirements of 45 CFR Subpart I—Refugee Social Services, published in the **Federal Register** of February 3, 1989 (54 FR 5481).

ORR funds may not be used to provide services to United States citizens, since they are not covered under the authorizing legislation, with the following exceptions: (1) Under current regulations, services may be provided to a U.S.-born minor child in a family in which both parents are refugees or, if only one parent is present, in which that parent is a refugee; and (2) under the FY 1989 Foreign Operations Appropriations Act (Pub. L. 100–461), services may be provided to an Amerasian from Vietnam who is a U.S. citizen and who enters the U.S. after October 1, 1988.

Reflecting section 412(a)(1)(A)(iv) of the INA, the Director expects States to "insure that women have the same opportunities as men to participate in training and instruction." In order to facilitate refugee self-support, the Director also strongly encourages States to implement potential of both primary and secondary wage earners in a family unit, particularly in the case of large families.

In accordance with 45 CFR 400.146 (54 FR 5481), if a State's cash assistance dependency rate for refugees (as defined in § 400.146(b)) is 55% or more, funds awarded under this notice for the basic and MAA incentive allocations are subject (as were all States' FY 1985–1989 funds) to a requirement that at least 85% of the State's award be used for employability services as set forth in § 400.154. ORR expects these funds to be used for services which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs in less than one year. This reflects the Congressional objective that "employable refugees should be placed in jobs as soon as possible after their arrival in the United States" and that social service funds be focused on "employment-related services, English-as-a-second-language training (in non-work hours where possible), and case-management services". (INA, section 412(a)(1)(B).)

As in previous years, ORR would consider granting, under specific circumstances, a waiver of the 85% provision. In order to receive a waiver, a State must meet either of the following two conditions:

1. The State demonstrates to the satisfaction of the Director of ORR that two of the following three circumstances exist: (a) The cash assistance rate for time-eligible refugees in the State is below the national average for all time-eligible refugees in the U.S.; (b) less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugees; and/or (c) there are non-employment-related service needs which are so exteme as to justify an allowance above the basic 15%. *Or*

2. In accordance with section 412(c)(1)(C) of the INA, as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605), the State submits to the Director a plan (established by or in consultation with local governments) which the Director determines provides for the maximum appropriate provision of employment-related services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees who participate in alternative projects. The Continuing resolution for FY 1985 (Pub. L. 98–473) amended section 412(e)(7)(A) of the INA to provide that:

The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson-Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (50 FR 24583, June 11, 1985). The notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts proposed for availability in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds being allocated under the present notice.

Finally, ORR believes that the continued and/or increased utilization of refugee mutual assistance associations (MAAs) in the provision of social services promotes appropriate use of services as well as the effectiveness of the overall service system. This belief is reinforced by the interest in MAAs which has developed under similar incentive funds awarded to States in previous years. Therefore additional funds which would be targeted specifically to these organizations have been included as an optional award to States which would use them for this purpose.

Taking into consideration that more funds have been appropriated for social services in FY 1990 than in recent previous years, ORR proposes to allocate $3,000,000 for FY 1990 MAA incentive awards, as compared with $2,500,000 allocated for this purpose in FY 1988 and 1989.

In order to receive the MAA incentive funds, the appropriate State agency official would have to provide written assurance to the Office of Refugee Resettlement that the following conditions would be observed by the State agency in using funds made available to the State under this special allocation:

1. That such funds will be used to fund refugee mutual assistance associations for the direct provision of services to refugee clients.

2. That the MAA incentive allocation is subject to and included under ORR's requirement that, in States where applicable, 85% of the total amount of social service funds allocated by this notice to a State be used for priority services, as defined elsewhere in this notice.

3. That the State agency will observe the following definition of a mutual assistance association:

a. The organization must be legally incorporated as a nonprofit organization; *and*

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association will be comprised of former refugees.

4. That the State agency will assist MAAs in seeking other public and/or private funds for the provision of services for refugee clients in subsequent years.

Written assurances should be sent to the Director, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., Washington, DC 20447, with a duplicate copy to the appropriate Family Support Administration (FSA) Regional Administrator. States must respond by 30 days from the date of the final notice in order to avail themselves of this special allocation.

II. [Reserved for discussion of comments in final notice.]

III. Proposed Allocation Formula

Of the funds available for FY 1990 for social services, $60,000,000 is proposed to be allocated to States in accordance with the formula specified below. A State's allowable allocation will be calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and Cuban/Haitian entrants who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated and the number of Amerasians from Vietnam eligible for refugee social services, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 1989, adjusted for estimated secondary migration.

The calculation above will yield the formula allocation for each State.

MAA incentive award supplements are allocated on the same 3-year population basis as that used in the social service formula. These funds will be made available contingent upon letters of assurance from States, as described previously.

IV. Basis of Population Estimates

The population estimates for the allocation of funds in FY 1990 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1989, for estimated secondary migration. The data base includes refugees of all nationalities and Amerasians from Vietnam as well as Cuban and Haitian entrants resettled after September 30, 1986. Figures on the numbers of entrants resettled are obtained from several sources, including the ORR Florida office and the Immigration and Naturalization Service.

For fiscal year 1990, ORR's formula allocations to the States for social services for refugees are based on the numbers of refugees who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1987, 1988, and 1989. Therefore estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1986, and September 30, 1989, who are thought to be living in each State as of October 1, 1989. The population estimates for the FY 1990 allocations cover refugees of all nationalities, Cuban/Haitian entrants, and Amerasians from Vietnam. Refugees admitted under the Federal Government's private-sector initiative are not included since their assistance and services are to be provided by the private sponsoring organization under an agreement with the Department of State.

All participating States submitted data on their secondary in-migration on Form ORR–11 for use in adjusting these population estimates. The total reported migration was summed, yielding a net migration figure for each State. This figure, the minimum documented migration affecting each State, was applied to the State's total arrival figure, resulting in a revised population estimate. This estimate was converted into a percentage of the total 3-year refugee population. The percentage distribution was compared with the percentage distribution generated from the refugee child count done by the U.S. Department of Education in March 1989. Where a significant discrepancy between the two percenage distributions existed which could not be explained except by secondary migration, a further adjustment was made to the State's estimated population. The population estimates of 14 States were adjusted in this manner. Finally, each State's population was deflated by approximately 1.9% to constrain the sum of the State figures to the known national total.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrants population for each State. Eligible Amerasians are included in the refugee figures.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1989, of refugees (col. 1), entrants (col. 2), and total refugees and entrants (col. 3); the formula amounts which the population estimates yield (col. 4); the total allocation amounts after allowing for the minimum amounts (col. 5); and the proposed amounts available as an incentive to States to use MAAs as service providers (col. 6).

A detailed explanation of the development of data used in this formula allocation can be obtained by writing to the address indicated in Section VI of this notice.

V. Proposed allocation Amounts

The following amounts are proposed for allocation for refugee social services in FY 1990:

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND PROPOSED ALLOCATIONS FOR FY 1990

State	Refugees (1)	Entrants (2)	Total population (3)	Formula amount (4)	Proposed allocation (5)	MAA incentive allocation (6)
Alabama	468	0	468	$109,016	$109,016	$5,429
Arizona	2,364	4	2,368	551,600	551,600	27,470
Arkansas	383	0	383	89,216	89,216	5,000
California	92,133	131	92,264	21,491,915	21,491,915	1,070,293
Colorado	2,289	2	2,291	533,664	533,664	26,576
Connecticut	2,563	8	2,571	598,887	598,887	29,824

State	Refugees (1)	Entrants (2)	Total population (3)	Formula amount (4)	Proposed allocation (5)	MAA incentive allocation (6)
Delaware	61	0	61	14,209	75,000	5,000
District of Columbia	950	7	957	222,923	222,923	11,102
Florida	7,929	6,294	14,223	3,313,096	3,313,096	164,992
Georgia	3,079	8	3,087	719,084	719,084	35,810
Hawaii	847	0	847	197,300	197,300	9,825
Idaho	428	0	428	99,698	99,698	5,000
Illinois	9,980	9	9,989	2,326,831	2,326,831	115,876
Indiana	420	1	421	98,067	98,067	5,000
Iowa	1,566	0	1,566	364,783	364,783	18,166
Kansas	1,705	0	1,705	397,162	397,162	19,779
Kentucky	638	7	645	150,246	150,246	7,482
Louisiana	1,645	2	1,647	383,651	383,651	19,106
Maine	467	0	467	108,783	108,783	5,417
Maryland	4,040	8	4,048	942,938	942,938	46,958
Massachusetts	9,508	10	9,518	2,217,117	2,217,117	110,412
Michigan	4,107	2	4,109	957,148	957,148	47,666
Minnesota	7,757	8	7,765	1,808,774	1,808,774	90,077
Mississippi	194	0	194	45,190	75,000	5,000
Missouri	1,968	215	2,183	508,507	508,507	25,324
Montana	152	0	152	35,407	75,000	5,000
Nebraska	657	0	657	153,041	153,041	7,621
Nevada	757	25	782	182,159	182,159	9,071
New Hampshire	452	0	452	105,289	105,289	5,243
New Jersey	4,337	1,050	5,387	1,254,844	1,254,844	62,491
New Mexico	420	0	420	97,835	97,835	5,000
New York	32,105	1,661	33,766	7,865,430	7,865,430	391,697
North Carolina	1,563	1	1,564	364,317	364,317	18,143
North Dakota	196	0	196	45,656	75,000	5,000
Ohio	2,813	2	2,815	655,724	655,724	32,655
Oklahoma	996	0	996	232,008	232,008	11,554
Oregon	3,338	0	3,338	777,552	777,552	38,722
Pennsylvania	6,342	0	6,342	1,477,301	1,477,301	73,569
Rhode Island	1,367	1	1,368	318,661	318,661	15,869
South Carolina	195	0	195	45,423	75,000	5,000
South Dakota	266	0	266	61,962	75,000	5,000
Tennessee	1,964	0	1,964	457,493	457,493	22,783
Texas	10,080	77	10,157	2,365,965	2,365,965	117,825
Utah	1,485	0	1,485	345,915	345,915	17,226
Vermont	338	2	340	79,199	79,199	5,000
Virginia	5,193	4	5,197	1,210,586	1,210,586	60,287
Washington	8,617	2	8,619	2,007,704	2,007,704	99,983
West Virginia	19	0	19	4,426	75,000	5,000
Wisconsin	5,403	0	5,403	1,258,571	1,258,571	62,677
Wyoming	28	0	28	6,522	75,000	5,000
Total	246,572	9,541	256,113	$59,658,795	$60,000,000	$3,000,000

VI. State Evidence on Refugee Population

If a State wishes ORR to reconsider its population estimate, it should submit written evidence. Requests will be evaluated according to a strict standard. The following is the type of evidence which would be considered appropriate:

- Documentation and discussion should be confined to the population entering the United States during fiscal years 1987, 1988, and 1989, and should clearly identify what refugee or entrant groups are being discussed.
- Evidence should include a description of the information collection system(s) used by the State, including data sources, time period covered, timeliness, and validation procedures.
- Special studies and reports can be considered only if they are submitted for review.
- An example of acceptable evidence would be a list of refugees identified by name, alien number, date of birth, date of arrival, and case size, if appropriate. *Listings of refugees who are not identified by their alien numbers will not be considered.*

Any State evidence on population estimates should be submitted separately from comments on the proposed allocation formula no later than 30 days from date of publication of this notice and should be addresssed to: Dr. Linda W. Gordon, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone: (202) 252–4568.

VII. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 13.814 Refugee Assistance State Administered Programs)

Dated: April 3, 1990.

Chris Gersten,

Director, Office of Refugee Resettlement.

Approved: April 5, 1990.

Eunice S. Thomas,

Acting Assistance Secretary for Family Support.

[FR Doc. 90–8376 Filed 4–10–90; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF THE INTERIOR
Bureau of Reclamation

Prairie Bend Unit, Pick-Sloan Missouri Basin Program, Buffalo, Dawson, Gosper, and Hall Counties, NE

AGENCY: Bureau of Reclamation (Interior).

ACTION: Notice of public hearings on the planning report/draft environmental statement; INT–DES–90–07.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Reclamation has prepared a planning report/draft environmental statement (PR/DES) on the Prairie Bend Unit, Pick-Sloan Missouri Basin Program, Nebraska. The PR/DES (INT–DES–90–07), was made available to the public on March 6, 1990. Two public hearings, will be held to receive comments from interested organizations and people on the environmental impacts of the proposed project.

DATES AND LOCATIONS:

- May 15, 1990, 7:00 p.m., Interstate Holiday Inn, I–80 and Highway 281, Grand Island, Nebraska.
- May 16, 1990, 7:00 p.m., Fort Kearney Inn, I–80, Kearney, Nebraska.

ADDRESS FOR COMMENTS: Regional Director, Bureau of Reclamation, Great Plains Regional Office, PO Box 36900, Attention: GP–700, Billings, MT, 59107–6900; telephone: (406) 657–6517.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Andrews, Planning Officer, Nebraska-Kansas Projects Office, PO Box 1607, Grand Island NE 68802, telephone: (308) 381–5536.

SUPPLEMENTARY INFORMATION: The Prairie Bend PR/DES evaluates three alternatives to manage wildlife habitat, augment streamflow, stabilize ground-water levels, maintain irrigation, enhance water quality, and provide additional outdoor recreation opportunities along the Platte River in central Nebraska. Under one of the alternatives, 52,900 acre-feet of water would be diverted from the Platte River for wildlife purpose and 54,400 acre-feet for ground-water recharge to benefit 61,300 acres of irrigated farmland. The second alternative would be similar to the first except that it would recharge ground water in the Twin Valley area also, benefiting a total of 103,300 irrigated acres. The third alternative was the "no action" alternative.

Speakers are requested to sign in at the beginning of each public hearing and will be called to speak in that order. Speakers not present when called will lose their privilege in the scheduled order and will have an additional opportunity to speak following the scheduled speakers. Oral comments will be limited to 10 minutes. The hearing officer may allow any speaker to provide further oral comment after all persons wishing to comment have been heard.

Written comments from those unable to attend or those wishing to supplement their oral presentations at the hearings should be received by Reclamation's Great Plains Regional Office, at the above address, by June 8, 1990.

Dated: April 5, 1990.

Joe D. Hall,

Bureau of Reclamation.

[FR Doc. 90–8371 Filed 4–10–90; 8:45 am]

BILLING CODE 4310–09–M

Office of the Secretary

National Strategic Materials and Minerals Program Advisory Committee; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, that the National Strategic Materials and Minerals Program Advisory Committee (NSMMPAC) will meet Thursday, April 26, 1990. The meeting will convene at 1:30 p.m. in the Secretary's conference room, fifth floor of the Main Interior Building (C Street entrance) at 18th and C Streets, NW., Washington, DC. This meeting will be open to the public. It is requested that public attendees call 634–1282 to facilitate admission to the Main Interior Building.

FOR FURTHER INFORMATION CONTACT: Cletus R. Uhlenhopp, Executive Director or Holly K. Volatile, Executive Secretary, Bureau of Mines—MS1010, 2401 E Street, NW., Washington, DC 20241, (202) 634–1282.

Dated: April 4, 1990.

Cletus R. Uhlenhopp,

Executive Director.

[FR Doc. 90–8340 Filed 4–10–90; 8:45 am]

BILLING CODE 4310–53–M

Bureau of Land Management

[OR–943–000–4212–13; GPO–183; OR–45076]

Conveyance of Public Lands; Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 7.74 acres of public land out of Federal ownership. This action will also open 229.10 acres of Federal ownership. This action will also open 229.10 acres of reconveyed land to surface entry, mining and mineral leasing.

EFFECTIVE DATE: May 17, 1990.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

SUPPLEMENTARY INFORMATION: Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756; 43 U.S.C. 1716, a patent has been issued transferring 7.74 acres in Clackamas County, Oregon, from Federal to private ownership.

In the exchange, the following described land has been reconveyed to the United States:

Willamette Meridian

Revested Oregon and California Railroad Grant Land

T. 2 S., R. 5 W.,

Secs. 21 and 28, as more particularly described as follows:

Beginning at a brass cap set on a two-inch galvanized iron pipe set for the southwest corner of the SE¼SW¼ of Sec. 21, from which a brass cap set of a two-inch galvanized iron pipe set for the quarter section corner common to Secs. 21 and 28 bears south 89°46'30" east 1,314.89 feet; thence north 70°36'38" east 2,474.82 feet; south 0°06' east 825.00 feet to the north line of Sec. 28, which point is north 89°54' east 1,021.01 feet from the above-described quarter section corner; thence north 90°54' east 197.00 feet to a point that is south 89°54' west 100.00 feet from a brass cap set on a two-inch iron pipe set for the southeast corner of the SW¼SE¼ of Sec. 21; thence south 0°06' east 1,530.00 feet; south 58°47' west 1,061.77 feet; south 0°06' east 231.00 feet; south 45°06' east 423.17 feet to the as travelled centerline of Fairdale County Road No. 290; thence following the as travelled centerline north 84°57'30" east 141.77 feet; thence north 81°58'40" east 150.50 feet; north 66°30' east 200.60 feet; north 59°09'15" east 419.30 feet; north 66°44'40" east 131.70 feet; north 81°40'10" east 283.00 feet; south 88°02'10" east 175.10 feet; north 81°40'10" east 283.00 feet; south 88°02'10" east 175.10 feet; south 75°26' east to the east line of Sec. 28; thence leaving the as travelled centerline, northerly along the east line of Sec. 28 to the northeast corner thereof; thence westerly along the north line of Sec. 28 to the brass cap on a two-inch iron pipe set for the southeast corner of the SW¼SE¼ of Sec. 21; thence northerly along the east line of the SW¼SE¼ of Sec. 21 to the northeast corner thereof; thence westerly on the north line of the SW¼SE¼ of Sec. 21 to the northwest corner thereof; thence northerly along the north-side centerline of Sec. 21 to the northeast corner of the SE¼NW¼ of Sec. 21; thence westerly along the north line of the SE¼NW¼ of Sec. 21 to the northwest corner thereof; thence southerly along the west lines of the SE¼NW¼, the NE¼SW¼, and the SE¼SW¼ of Sec. 21 to the point of beginning.

Excepting Therefrom that portion lying within County Road No. 290. The area described contains, after making the

aforesaid exception, 229.10 acres in Yamhill County.

At 8:30 a.m., on May 17, 1990, the above described and will be open to operation of the public lands laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on May 17, 1990, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on May 17, 1990, the above described land will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on May 17, 1990, the above described land will be open to applications and offers under the mineral leasing laws.

Dated: April 2, 1990

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-8355 Filed 4-10-90; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-00-4212-13; GPO-185; OR-41529]

Conveyance of Public Lands; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 467.12 acres of public land out of Federal ownership. This action will also open 428.57 acres of reconveyed lands to surface entry, mining and mineral leasing.

EFFECTIVE DATE: May 17, 1990.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756; 43 U.S.C. 1716, a patent has been issued transferring 467.12 acres in Douglas County, Oregon, from Federal to private ownership.

In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 19 S., R. 9 W.,
Sec. 24, lots 5, 6, 7, 8, 10, 11, and 12.
T. 21 S., R. 7 W.,
Sec. 30, lots 1 and 2, NW¼NE¼ and NE¼ NW¼.
The areas described aggregate 428.57 acres in Douglas County.

At 8:30 a.m. on May 17, 1990, the above described lands will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on May 17, 1990, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on May 17, 1990, the above described lands will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on May 17, 1990, the above described lands will be opened to applications and offers under the mineral leasing laws.

Dated: April 2, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-8357 Filed 4-10-90; 8:45 am]

BILLING CODE 4310-33-M

[CO-931-90-4333-12-2411]

Establishment of 14-Day Camping Limit on Public Lands Within Colorado

AGENCY: Bureau of Land Management, Colorado.

ACTION: Notice to establish camping stay limits on all public lands within Colorado.

SUMMARY: Notice is given that person(s) may occupy a site or multiple sites on public lands not closed or otherwise restricted to camping within the state of Colorado for a total period of not more than fourteen (14) days. Following the fourteen (14)-day period, person(s) may not relocate within that area for a minimum of seven (7) days and must move a distance of three (3) miles from the site or sites that were previously occupied. The fourteen (14)-day limit may be reached either through a number of separate visits or through a period of continuous occupation of a site. Under certain circumstances, such as special recreation use permits or upon request, the authorized office may give written permission for extension of the fourteen (14)-day limit.

Additionally, no person may leave personal property unattended in designated campgrounds, recreation developments or anywhere else on public lands within the state of Colorado for a period of more than forty-eight (48) hours without written permission from the authorized officer.

This camping stay limit does not apply to Long-Term Visitor Use Areas which may be so designated in the future by the BLM District in Colorado.

EFFECTIVE DATE: This camping stay limit will be effective 30 days from date of this notice.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this camping stay limit for public lands administered by the BLM in the state of Colorado may be obtained from Barbara Sharrow, Recreation Planner, at (303) 236-1752, or John Silence, Special Agent, at (303) 236-1794, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

SUPPLEMENTARY INFORMATION: This camping stay limit is being established in order to assist the Bureau in reducing the incidence of long-term occupancy trespass being conducted under the guise of camping on public lands within the state of Colorado. Of equal importance is the problem of long-term camping, which precludes equal opportunities for other members of the public to camp in the same area, which creates user conflicts. This Notice supersedes Montrose District FR Notice Vol. 50, No. 131, Tuesday, July 9, 1985. CFR title 43, chapter II, part 8360, subpart 8364.1, subpart 8365, subpart 8365.1-2, 8365.1-6, and 8365.2-3 provide

authority for establishing this camping stay limit.

8360.0–7 Penalties: Violations of any regulations in this part by a member of the public, except for the provisions of 8365.1–7, are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Violations of supplementary rules authorized by 8365.1–6 are punishable in the same manner.

Dated: April 3, 1990.

Bob Moore,

State Director.

[FR Doc. 90–8349 Filed 4–10–90; 8:45 am]

BILLING CODE 4310–JB–M

[OR–943–00–4214–11; GPO–184; WASH–03359, et al.]

Proposed Continuation of Withdrawals, Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that all or portions of six separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining, and, where closed, opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The following described lands and projects are involved:

Snoqualmie National Forest

1. WASH–03359, Public Land Order No. 4518 dated August 28, 1968. Middle Fork Snoqualmie—Taylor River Road Zone, 730 acres located in Secs. 6, 7, 8, 9, 15, and 16, T. 23 N., R. 11 E., Secs. 2, 10, 15, 21, 22, 23, 25, 26, and 29, T. 24 N., R. 10 E., and Secs. 7 and 31, T. 24 N., R. 11 E., W.M., in King County, approximately 18 miles east of North Bend.

2. WASH–05491, Public Land Order No. 3547 dated February 15, 1965. Miller River Campground, 70 acres located in Sec. 4, T. 25 N., R. 11 E., W.M., in King County, approximately 3 miles south of Mill River.

Mt. Baker National Forest

3. WASH–01599–A, Public Land Order No. 1501 dated September 9, 1957. Mt. Baker State Highway Zone, 5,230 acres located in Secs. 1 to 5, inclusive, and 8, T. 39 N., R. 7 E., Secs. 33, 34, 35, and 36, T. 40 N., R. 7 E., Secs. 2, 3, 6, and 25, T. 39 N., R. 8 E., Secs. 32 to 36, inclusive, Secs. 5, 6, 7, 8, 17, 18, 19, 20, and 30, T. 39 N., R. 9 E., and Sec. 31, T. 40 N., R. 9 E., W.M., in Whatcom County, approximately 1 mile east of Glacier.

4. OR–22164, Secretarial Order dated June 30, 1908. Gold Hill Administrative Site, 40 acres located in Sec. 18, T. 32 N., R. 10 E., W.M., in Snohomish County, approximately 2 miles east of Darlington.

5. OR–22348, Secretarial Order dated March 16, 1908. Glacier Administrative Site, 12.50 acres located in Sec. 8, T. 39 N., R. 7 E., W.M., in Whatcom County, approximately 12 miles east of Van Zandt.

6. OR–22351, Secretarial Order dated August 9, 1907. Bacus Creek (now known as Marblemount) Ranger Station Site, 20 acres located in Sec. 12, T. 35 N., R. 10 E., W.M., in Skagit County, near the town of Marblemount.

The Withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawals continuations may present their view in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: April 2, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90–8357 Filed 4–10–90; 8:45 am]

BILLING CODE 4310–33–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–457 (Preliminary)]

Heavy Forged Handtools From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–457 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of heavy forged handtools,[1] provided for in subheadings 8201.30.00, 8201.40.60, 8205.20.60, and 8205.59.30 of the Harmonized Tariff Schedule of the United States (previously under items 648.53, 648.67, 651.23, and 651.25 of the former Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by May 21, 1990.

For general information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: April 4, 1990.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–252–1188), Office of Investigations, U.S. International Trade Commission, 500 E

[1] For purposes of this investigation, the term "heavy forged handtools" covers handtools (with or without handles) of the following kinds: mattocks and picks, provided for in subheading 8201.30.00 of the Harmonized Tariff Schedule of the United States (HTS); axes, bill hooks and similar hewing tools, provided for in subheading 8201.40.60 of the HTS; hammers and sledge hammers, including drilling hammers and woodsplitting mauls, with heads over 1.5 kilograms (3.3 pounds) each, provided for in subheading 8205.20.60 of the HTS; and crowbars, track tools and wedges, including wrecking bars, digging bars and tampers but excluding bars measuring 46 centimeters (18 inches) and under in length, provided for in subheading 8205.59.30 of the HTS.

Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on April 4, 1990, by Woodings-Verona Tool Works, Inc., Verona, PA.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary of the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on April 25, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Woodley Timberlake (202-252-1188) not later than April 23, 1990, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before April 30, 1990, a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in section 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their brief, and may also file additional written comments on such information no later than May 3, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: April 6, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-8412 Filed 4-10-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-281]

Supplemental Report on Estimated Tariff Equivalents of Nontariff Barriers on Certain Agricultural Imports in the European Community, Japan, and Canada

AGENCY: United States International Trade Commission.

ACTION: Supplemental report; request for written comments.

SUMMARY: On March 26, 1990, the Commission received a request from the United States Trade Representative (USTR) for a supplemental report in connection with investigation No. 332-281 for the purpose of calculating for 1986, 1987, and 1988 the tariff equivalents of:

(1) EC import restrictions on dairy products (butter, cheese, and nonfat dry milk), sugar and wheat;

(2) Japanese import restrictions on dairy products (butter, cheese, and nonfat dry milk), sugar and rice; and

(3) Canadian import restrictions on dairy products (butter, cheese, and nonfat dry milk), eggs and poultry.

The requested report is a supplement to the Commission's earlier to the Commission's earlier report on investigation No. 332-281, *Estimated Tariff Equivelents of U.S. Quotas on Agricultural Imports and Analysis of Competitive Conditions in U.S. and Foreign Markets for Sugar, Meat, Peanuts, Cotton, and Dairy Products,* which was furnished to the USTR on February 28, 1990. Notice of the institution of that investigation was published in the **Federal Register** (54 FR 46134, November 1, 1989).

The USTR requested that the Commission furnish the supplemental report not later than April 30, 1990.

EFFECTIVE DATE: April 3, 1990.

FOR FURTHER INFORMATION CONTACT: Roger Corey (202-252-1327) or David Ingersoll (202-252-1309), Agriculture Division, Office of Industries, U.S. International Trade Commission. Hearing-impaired persons can obtain information on this study by contacting our TDD terminal on (202) 252-1810.

Written Submission: Interested persons may submit written statements concerning the investigation. To be assured of consideration, written

statements (original plus 14 copies) must be received by the close of business (5:15 p.m.) on April 13, 1990. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidental treatment must conform to the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: April 3, 1990.

[FR Doc. 90-8370 Filed 4-10-90; 8:45 am]

BILLING CODE 7020-02-M

[TA-503(a)-20 and 332-290]

President's List of Articles Which May be Designated or Modified as Eligible Articles for Purposes of the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Change of filing deadline for written submissions.

SUMMARY: The deadline for filing written submissions in investigation No. TA-503(a)-20 and 332-290 is changed from the close of business on April 16, 1990 to the close of business on April 26, 1990.

The filing deadlines of April 11, 1990 for prehearing briefs and April 26, 1990 for posthearing briefs remain unchanged.

The initial notice of institution of investigation and scheduling of hearing for investigation No. TA-503(a)-20 and 332-290 was publish in the Federal Register of March 28, 1990 (55 FR 11449).

EFFECTIVE DATES: March 30, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Cook (202-252-1471) in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at (202) 252-1091.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252-1810

By order of the Commission.

Issued: April 4, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-8367 Filed 4-10-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-282]

Review of Mexico's Recent Trade and Investment Liberalization Measures Phase II; Prospects for Future U.S.—Mexican Trade Relations

AGENCY: United States International Trade Commission.

ACTION: Notice of Location of Off-Site Hearing.

EFFECTIVE DATE: February 6, 1990.

FOR FURTHER INFORMATION CONTACT: Constance A. Hamilton (202-252-1263), Trade Reports Division, Office of Economics, U.S. Intenational Trade Commission, Washington, DC 20436.

Background:

Phase II of investigation no. 332-282 will provide a summary of the views of recognized authorities (for example, government officials, scholars, private sector businessmen, and others) on possibilities for the future direction of the U.S.-Mexican bilateral relationship. Such possibilities might include a free trade area, an enhanced dispute settlement mechanism, sectoral approaches, and other options for enhanced bilateral relations.

Public Hearing:

A public hearing in connection with phase II of this investigation will be held on May 8, 1990 beginning at 9:30 a.m., at the Doubletree Hotel located at Randolph Park, 445 South Alverson Way, Tucson, Arizona 85711. All persons have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW, Washington, DC. 20436, no later than noon, April 30, 1990. The deadline for filing prehearing briefs (original and 14 copies) is April 30, 1990. Post hearing briefs are due on May 22, 1990.

Written Submissions:

Interested persons are invited to submit written statements concerning the matters to be addressed in the phase II report. Commerical or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection to interested persons by the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest possible date and should be received no late than July 16, 1990. All submissions should be addressed to the Secretary to the Commission at the Commission's office in Washington, D.C.

By order of the Commission.

Issued: April 4, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-8368 Filed 4-10-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-456 (Preliminary)]

Phototypesetting and Imagesetting Machines and Subassemblies Thereof From the Federal Republic of Germany

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: April 3, 1990.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202-252-1182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION: On March 20, 1990, the Commission instituted the subject investigation and established a schedule for its conduct (55 FR 1148, March 28, 1990). Subsequently, counsel for the respondent requested a postponement of the date of the conference. The Commission, therefore, is revising its schedule in the investigation to conform with the respondent's request.

The Commission's new schedule for the investigation is as follows: parties

wishing to participate in the conference must contact Olympia DeRosa Hand by April 5, 1990; the conference will be held at the U.S. International Trade Commission Building on April 11, 1990; the deadline for filing postconference briefs is April 13, 1990; and the deadline for parties to file additional written comments on business proprietary information is April 16, 1990.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 207, subparts A anc C (19 CFR part 207), and part 201, subparts A through E (19 CFR Part 201).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VTI. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20)

By order of the Commission.

Issued: April 4, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–8369 Filed 4–10–90; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub-No. 2)]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Methodological Change.

SUMMARY: The Commission has decided to change the methodology for calculating the fuel component of the index used to calculate the quarterly Rail Cost Adjustment Fact (RCAF). Beginning with the fourth quarter of 1990 a monthly average price rather than a mid-month price will be used. Data will be supplied only by the seven largest railroads, which also supply price data for the market basket of materials and supplies. Fuel prices, both forecasted and actual, shall include transportation charges for services rendered by other carriers when current invoices evidencing those charges are available. Prices shall include refunds and rebates (other than refunds ordered by DOE). The average price shall be based on each reporting railroad's share of the total gallons of fuel invoiced during a given study month. The change is being made to reflect changed industry purchasing patterns and will result in a more accurate fuel index.

EFFECTIVE DATE: Effective on May 11, 1990.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275–7354. Robert C. Hasek (202) 275–0938. [TDD for hearing impaired (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington DC 20423. Telephone: (202) 289–4357 or 4359. [Assistance for the hearing impaired is available through TDD services: (202) 275–1721.]

This action will not significantly affect either the quality of the human environment or energy conservation. It will not have a significant impact on a substantial number of small entities.

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Dated: April 4, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett. Commissioner Lamboley concurred in the result with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 90–8402 Filed 4–10–90; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 344X)]

CSX Transportation, Inc.—Abandonment Exemption—in Baltimore County, MD; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 0.53-mile line of railroad between valuation stations 230+22 and 258+15, in Baltimore, MD.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 11, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by April 23, 1990.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by May 1, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by April 16, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 4, 1990.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-8107 Filed 4-10-90; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-No.5)]

Intrastate Rail Authority; Georgia

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional recertification.

SUMMARY: The State of Georgia has filed its application for recertification with the Commission. Pursuant to *State Intrastate Rail Rate Authority*, 5 I.C.C.2d 680,685 (1989), the Commission provisionally recertifies the State of Georgia to regulate intrastate railroad rates, practices, and procedures. After completing its review, the Commission will issue a decision approving recertification or taking other appropriate action.

EFFECTIVE DATE: The provisional recertification will be effective on April 11, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721.]

Decided: March 29, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-8291 Filed 4-10-90; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-No. 18)]

Intrastate Rail Rate Authority; Montana

AGENCY: Interstate Commerce Commisson.

ACTION: Notice of provisional certification.

SUMMARY: The State of Montana has filed its application for recertification with the Commission. Pursuant to *State Intrastate Rail Rate Authority*, 5 I.C.C.2d 680, 685 (1989), the Commission provisionally recertifies the State of Montana to regulate intrastate railroad rates, practices, and procedures. After completing its review, the Commission will issue a decision approving recertification or taking other appropriate action.

EFFECTIVE DATE: This provisional recertification will be effective on April 11, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

Decided: March 29, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-8293 Filed 4-10-90; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-No. 17)]

Intrastate Rail Rate Authority—Missouri

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional certification.

SUMMARY: The State of Missouri has filed its application for recertification with the Commission. Pursuant to *State Intrastate Rail Rate Authority*, 5 I.C.C.2d 680, 685 (1989), the Commission provisionally recertifies the State of Missouri to regulate intrastate railroad rates, practices, and procedures. After completing its review, the Commission will issue a decision approving appropriate action.

EFFECTIVE DATES: This provisional recertification will be effective on April 11, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245. (TDD for hearing impaired: (202) 275-1721).

Decided: March 29, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-8292 Filed 4-10-90; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-No. 23)]

Intrastate Rail Rate Authority; New York

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional recertification.

SUMMARY: The State of New York has filed its application for recertification with the Commission. Pursuant to *State Intrastate Rail Rate Authority*, 5 I.C.C.2d 680, 685 (1989), the Commission provisionally recertifies the State of New York to regulate intrastate railroad rates, practices, and procedures. After completing its review, the Commission will issue a decision approving recertification or taking other appropriate action.

EFFECTIVE DATE: This provisional recertification will be effective on April 11, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

Decided: March 29, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-8294 Filed 4-10-90; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-No. 24)]

Intrastate Rail Rate Authority; North Dakota

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional recertification.

SUMMARY: The State of North Dakota has filed its application for recertification with the Commission. Pursuant to *State Intrastate Rail Rate Authority*, 5 I.C.C.2d 680, 685 (1989), the Commission provisionally recertifies the State of North Dakota to regulate intrastate railroad rates, practices, and procedures. After completing its review, the Commission will issue a decision approving recertification or taking other appropriate action.

EFFECTIVE DATES: This provisional recertification will be effective on April 11, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

Decided: March 29, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-8295 Filed 4-10-90; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-No. 29)]

Intrastate Rail Rate Authority; South Carolina

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional certification.

SUMMARY: The State of South Carolina has filed its application for recertification with the Commission. Pursuant to *State Intrastate Rail Rate*

Authority, 5 I.C.C.2d 680, 685 (1989), the Commission provisionally recertifies the State of South Carolina to regulate intrastate railroad rates, practices, and procedures. After completing its review, the Commission will issue a decision approving recertification or taking other appropriate action.

EFFECTIVE DATE: This provisional recertification will be effective on April 11, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 [TDD for hearing impaired: (202) 275–1721].

Decided: March 29, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90–8296 Filed 4–10–90; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 388 (Sub-No. 35)]

Intrastate Rail Rate Authority; West Virginia

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional certification.

SUMMARY: The State of West Virginia has filed its application for recertification with the Commission. Pursuant to *State Intrastate Rail Rate Authority*, 5 I.C.C.2d 680, 685 (1989), the Commission provisionally recertifies the State of South Carolina to regulate intrastate railroad rates, practices, and procedures. After completing its review, the Commission will issue a decision approving recertification or taking other appropriate action.

EFFECTIVE DATE: This provisional recertification will be effective on April 11, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 [TDD for hearing impaired: (202) 275–1721].

Decided: March 29, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90–8297 Filed 4–10–90; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 388 (Sub-No. 36)]

Intrastate Rail Rate Authority; WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional recertification.

SUMMARY: The State of Wisconsin has filed its application for recertification with the Commission. Pursuant to *State Intrastate Rail Rate Authority*, 5 I.C.C.2d 680, 685 (1989), the Commission provisionally recertifies the State of Wisconsin to regulate intrastate railroad rates, practices, and procedures. After completing its review, the Commission will issue a decision approving recertification or taking other appropriate action.

EFFECTIVE DATE: This provisional recertification will be effective on April 11, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

Decided: March 29, 1990.

Noreta R. McGee,

Secretary.

[FR Doc. 90–8298 Filed 4–10–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act, Copperweld Steel Co.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on March 29, 1990, a proposed Consent Decree in *United States* v. *Copperweld Steel Company*, Civil Action No. C86–4991Y was lodged with the United States District Court for the Northern District of Ohio. The proposed consent decree resolves a judicial enforcement action brought by the United States against the Copperweld Steel Company for violation of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

The consent decree requires the defendant to pay the sum of one hundred, ten thousand dollars ($110,000.00) to the United States government, to be made in four equal installments of twenty-seven thousand, five hundred dollars ($27,500) over a two year period. The payments shall be due on the first day of the sixth, twelfth, eighteenth, and twenty-fourth month following entry of this consent decree. The decree also requires Copperweld to close certain unpermitted hazardous waste facilities and to take other steps to bring itself into compliance with the Resource Conservation and Recovery Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Copperweld Steel Company*, D.J. Ref. 90–7–1–363.

The proposed consent decree may be examined at the office of the United States Attorney, suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114.

Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

George W. Van Cleve,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90–8350 Filed 4–10–90; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

April 5, 1990.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on May 3–4, 1990.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon session schedule on May 3–4, 1990, will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that my disclose: Trade

secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the sessions on May 3, 1990, will be as follows:

8:30-9 a.m.
Coffee for Council Members—Room 526 (Open to the Public)

Committee Meetings

(Open to the Public) Policy Discussion

9-10 a.m.
Education Programs—Room M-14
Fellowship Programs—Room 316-2
General Programs—Room 415
Research Programs/Preservation Grants—Room 315
State Programs/Challenge Grants—Room M-07
10 a.m. until Adjourned
(Closed to the Public)
Discussion of specific grant applications before the Council
2:30 p.m. until Adjourned
Jefferson Lecture Committee—Room 430 (Closed to the Public)
Discussion of Jefferson Lecture Nominees

This morning session on May 4, 1990, will convene at 9 a.m., in the 1st Floor Council Room, M-09, and will be open to the public. The agenda for the morning session will be as follows:

(Coffee for Staff and Council members will be served from 8:30-9 a.m.)

Minutes of the Previous Meeting Reports
A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Dates of Future Council Meetings
E. Application Report, Matching Report, and Status of Fiscal Year 1990 Funds
F. Legislative Report
G. Fiscal Year 1991 Appropriation Request
H. Fiscal Year 1992 Budget Planning
I. Committee Reports on Policy and General Matters
1. Education Programs
2. Fellowship Programs
3. Preservation Grants
4. Research Programs
5. General Programs
6. State Programs
7. Challenge Grants
8. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of specific application (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Catherine G. Wolhowe, Advisory Committee Management Officer (Alternate), Washington, DC 20506, or call area code 202-786-0322.

Catherine G. Wolhowe,

Advisory Committee Management Office (Alternate).

[FR Doc. 90-8393 Filed 4-10-90; 8:45 am]

BILLING CODE 7536-01-M

Inter-Arts Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Artists' Projects: New Forms Prescreening Section) to the National Council on the Arts will be held on April 23-27, 1990, from 9:30 a.m.-8:00 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-8329 Filed 4-10-90; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

State of Illinois; Staff Assessment of Proposed Amendment Number One to the Agreement Between the Nuclear Regulatory Commission and the State of Illinois

Note: This document was originally published on March 28, 1990, at 55 FR 11459. It is republished at the request of the issuing agency.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Proposed Amended Agreement with State of Illinois.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is publishing for public comment the NRC staff assessment of a proposed amendent to the existing section 274b agreement between the NRC and the State of Illinois which became effective June 1, 1987. The request dated April 11, 1989 from Governor James R. Thompson of the State of Illinois, if approved, would permit Illinois to regulate byproduct materials as defined in section 11e.(2) of the Atomic Energy Act, as amended, (uranium or thorium mill tailings) in conformance with the requirements of section 274O of the Atomic Energy Act of 1954, as amended (the Act).

A staff assessment of the State's proposed radiation control program to implement the amended ageement is set forth below as supplementary information ot this notice. A copy of the complete program description submitted by Illinois, including a program statement prepared by the State describing the State's proposed program for control over byproduct materials as defined in section 11e.(2) of the Act, State legislation, and Illinois regulations, is available for public inspection at the Commission's Public Document Room at 2120 L Street, NW, Washington, DC, the Commission's Region III Office at 799 Roosevelt Road, Building No. 4, Glen Ellyn, Illinois, and the Illinois Department of Nuclear Safety at 1035 Outer Park Drive, Springfield, Illinois. Exemptions from and reservations of the Commission's regulatory authority, which would implement this proposed amendment to the existing 274b agreement, have been published in the **Federal Register** and codified as Part 150 of the Commission's regulations in Title 10 of the Code of Federal Regulations.

DATES: Comments must be received on or before April 27, 1990.

ADDRESSES: Submit written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Services Branch. Comments may also be delivered to 11555 Rockville Pike, Rockville, Maryland from 7:45 a.m. to 4:15 p.m. Monday through Friday. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vandy L. Miller, Assistant Director for State Agreements Program, U.S. Nuclear Regulatory Commission, Washington, DC. Telephone: 301-492-0326.

SUPPLEMENTARY INFORMATION: Assessment of proposed amended Illinois Program to regulate certain radioactive materials pursuant to section 274 of the Atomic Energy Act of 1954, as amended (the Act).

The Commission has received a proposal from the Governor of Illinois for the State to amend its agreement with the NRC whereby the NRC would relinquish and the State would assume regulatory authority for byproduct material, as defined in section 11e.(2) of the Act, pursuant to section 274 of the Act.

Section 274e of the Act requires that the terms of the proposed agreement be published for public comment once each week for four consecutive weeks. Accordingly, this notice will be published four times in the **Federal Register.**

I. Background

A. Section 274 of the Act provides a mechanism whereby the NRC may transfer to the State certain regulatory authority over agreement materials [1] when a State desires to assume this authority and the Governor certifies that the State has an adequate regulatory program, and when the Commission finds that the State's program is compatible with that of the NRC and is adequate to protect the public health and safety. Section 274g directs the Commission to cooperate with the States in the formulation of standards for protection against radiation hazards to assure that State and Commission programs for radiation protection will be coordinated and compatible. Further, section 274j provides that the Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

The Uranium Mill Tailings Radiation Control Act of 1978 amended the requirements of section 274 of the Atomic Energy Act, by adding section 274o which imposed certain requirements that must be met by Agreement States in order to regulate uranium and thorium mill tailings after November 8, 1981.

B. On May 18, 1987, the Governor of Illinois signed an agreement with the NRC for the assumption of regulatory authority for byproduct material as defined in section 11e.(1) of the Act, source material, special nuclear material in quantities not sufficient to form a critical mass, and the land disposal of source, byproduct, and special nuclear material received from other persons. This agreement became effective on June 1, 1987. In a letter dated April 11, 1989, Governor James R. Thompson of the State of Illinois requested that the Commission entered into an amended agreement with the State pursuant to section 274 of the Act under which the State would assume responsibility for regulating uranium and thorium mill tailings (11e.(2) byproduct material) and the operations that generate such material. The Governor certified that the State of Illinois has a program for control of radiation hazards which is adequate to protect the public health and safety with respect to the materials within the State covered by the proposed amendment to the agreement, and that the State of Illinois desires to assume regulatory responsibility for such materials. The text of the proposed amendment to the agreement is shown in Appendix A.

The specific authority requested is for source material recovery activities including the uranium and thorium mill tailing (byproduct material as defined in section 11e.(2) of the Act). The proposed amemdment to the agreement covers the following areas:

1. Amending Article I of the Agreement of May 18, 1987 to add the extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting by product material as defined in section 11e.(2) of the Act to the list of materials covered by the agreement.

2. Amending Article II of the Agreement of May 18, 1987 by inserting "A." before "This Agreement," by redesignation paragraphs A. thorugh D. as subparagraphs 1. through 4., by deleting paragraph E. releating to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and by adding a new paragraph B. relating to authorities pertaining to byproduct as defined in section 11e.(2) of the Act that will by retained by the Commission.

3. Amending Article IX by redesignating it Article X and by inserting a new Article IX which requires compliance with 274o of the Act and specifies certain financial surety requirements in subparagraphs A. and B.

4. States that the Agreement of May 18, 1987 remains in effect except as modified by the above amendments.

5. Specifies the effective date of Amendment Number One.

The State has no active uranium or thorium mills processing ore for its source material content. However, one facility exists under an NRC license at West Chicago, Illinois. This mill began operation in 1931 to process ore containing thorium and rate earth metals.

Kerr-McGee Chemical Corporation (Kerr-McGee) acquired the facility in 1967 and operated it until closing the plant in 1973. In 1979 Kerr-McGee submitted a plan to the NRC for decommissioning the West Chicago site and stabilizing the accumulated waste and tailings. The plan was modified and the most recent version submitted to NRC in 1986. Besides onsite wastes and ore residuals, wastes are known to exist offsite as well. On August 5, 1988, the Commission issued a decision on the regulatory aspects of the radiologically contaminated material on and offsite. The Commission held: (1) The radiologically contaminated material in and along Kress Creek and the West Branch of the DuPage River was 11e.(2) byproduct material and, therefore, not within the scope of the section 274b agreement into which the Commission entered with Illinois in 1987, and remained within the regulatory authority of the Commission; and (2) the radiologically contaminated material in Reed-Keppler Park and certain residential areas of DuPage County, and the radiologically contaminated material returned from the West Chicago Sewage Treatment Pland and residential areas within the City of West Chicago to the West Chicago Rare Earths Facility Site, was source material that is within the scope of the agreement and was, therefore, under the regulatory authority of the State of Illinois.

In rendering this decision, the Commission upheld the position that the thorium-contaminated materials described in (2) above should be classified as source material. It further held that the thorium-contaminated material in Kress Creek should be classified as 113.(2) byproduct material. Consequently, in order for the State of Illinois to regulate the latter, the State of Illinois would need to have its existing Agreement amended to demonstrate compliance with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. Details relating to the Rare Earths Facility are contained in the Final Environmental Statement (NUREG–0904, 1983) and the Supplement to the Final Envionmental Statement (NUREG–0904, Supplement No. 1, 1989) related to the

[1] A. Byproduct materials as defined in 11e.(1).
B. Byproduct materials as defined in 11e.(2).
C. Source materials; and
D. Special nuclear materials in quantities not sufficient to form a critical mass.

decommissioning of the Rare Earths Facility, West Chicago, Illinois.

On February 13, 1990, the Atomic Safety and Licensing Board (Licensing Board) issued a decision directing the staff to issue a license amendment authorizing Kerr-McGee to dispose of the 11.e(2) byproduct material as proposed by Kerr-McGee in its application. The staff issued the amendment on February 23, 1990. The State of Illinois and the City of West Chicago each filed a Notice of Appeal before the Atomic Safety and Licensing Appeal Board (Appeal Board). The State of Illinois and the City of West Chicago also requested the Appeal Board to stay the Licensing Board's decision. The Appeal Board issued an Order on March 13, 1990 denying the State's and the City's requests for a stay.

C. Ill. Rev. Stat. 1985, ch. 127, par. 63b17, the enabling statute for the Illinois Department of Nuclear Safety (IDNS) and Ill. Rev. Stat. 1987, ch. 111½, par. 211–229, the Illinois Radiation Protection Act authorize the Department to issue licenses to, and perform inspections of, users of radioactive materials under the Agreement and otherwise carry out a total radiation control. Illinois regulations for radiation protection were adopted on September 25, 1986 under authority of the enabling statute and provide standards, licensing, inspection, enforcement and administrative procedures for agreement and non-agreement materials. These standards and procedures became effective on June 1, 1987, the effective date of the Agreement. As amended by P.A. 85–1160, effective August 5, 1988, the Illinois Radiation Protection Act authorizes the IDNS to regulate byproduct material as defined in section 11e.(2) of the Act. To provide for licensing of 11e.(2) byproduct material and source material recovery facilities which generate 11e.(2) byproduct material, a new Part 332 has been added to the Illinois Administrative Code (32 Ill. Adm. Code 332). These regulations were finalized on January 4, 1990 and will become effective when the Amendment Number One becomes effective. On February 6, 1990, Kerr-McGee sought judicial review of the final regulations in the Illinois courts (Kerr-McGee Chemical Corp. v. IDNS, No. 90MR49; Ill. Cir. Ct., Sangmon County). This proceeding is still pending.

On January 10, 1990, the Illinois General Assembly Joint Committee on Administrative Rules (JCAR) met and issued 13 objections to the final regulations for source material recovery and 1e.(2) byproduct material (32 Ill. Adm. Code 332). These objections were published in the Illinois Register on February 2, 1990. In accordance with Section 7.07 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1987, ch. 127, par. 1007.07), IDNS has 90 days to respond to the objections and, if IDNS does not respond within 90 days, the lack of response will constitute a refusal to amend or repeal this rule. Unless the JCAR drafts and introduces legislation requiring IDNS to implement the recommendations, no futher actions are required of IDNS.

D. On June 1, 1987, Illinois assumed regulatory authority for (1) byproduct material as defined in section 11e.(1) of the Act, (2) source material, (3) special nuclear material in quantities not sufficient to form a critical mass, and (4) permanent disposal of low-level radioactive waste containing one or more of the foregoing materials but not containing uranium and thorium mill tailings (byproduct material as defined in section 11e.(a) of the Act). The program audits conducted since that time have resulted in NRC findings that the Illinois radiation control program is compatible with that of the NRC and is adequate to protect public health and safety.

Illinois is one of two States with a cabinet-level agency devoted exclusively to radiation safety and control. Illinois' role in radiation safety is traceable to 1955 when the Illinois General Assembly created the Atomic Power Investigating Commission. The Illinois Department of Nuclear Safety Program provides a comprehensive program encompassing radiation protection regulations for radioactive materials and machine produced radiation, lasers, low-level radioactive waste management, surveillance of transportation of radioactive materials and environmental radiation, coordination of State government functions concerning nuclear power and emergency preparedness.

E. The proposed amendment to the Illinois agreement will cover the regulation of source material extraction from ores processed primarily for their source material content and the management and disposal of the resulting tailings and other wastes (byproduct material as defined in section 11e.(2) of the Act). The State's proposed program for the regulation of source material extraction and 11e.(2) byproduct material is assessed under Criteria 29 through 36 of the guidelines published by NRC, Criteria for Guidance of States and NRC is Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.[2] These criteria are specifically identified as "Additional Criteria for States Regulating Uranium or Thorium Processors and Wastes Resulting Therefrom After November 8, 1981" and addressed the Statutes, Regulations, Organizational Relationships Within the States, Personnel, Functions To Be Covered, and Instrumentation. Prior evaluation of the Illinois program in accordance with Criteria 1 through 28, was addressed in the staff assessment of the original Illinois proposed agreement published in the Federal Register on January 21, 1987 (52 FR 2309–2324).

II. NRC Staff Assessment of the Proposed Illinois' Radiation Control Program for Control of Uranium and Thorium Processors and the Waste Resulting Therefrom

Reference: Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.[2]

A. Statutes

29. State statutes or duly promulgated regulations should be enacted, if not already in place, to make clear State authority to carry out the requirements of Public Law 95–604, Uranium Mill Tailings Radiation Control Act, as amended (UMTRCA).

Based on the analysis of the State's revised statutes, regulations, and the State's program statement, the staff concludes that the Illinois Radiation Protection Act and the State's implementing regulations provide adequate authority for Illinois to regulate section 11e.(2) byproduct material in accordance with the requirements of the Uranium Mill Tailings Radiation Control Act, as amended. The Radiation Protection Act requires the IDNS to provide, by rule or regulation, standards for the protection of the public health and safety and the environment that are equivalent, to the extent practicable, or more stringent than, the standards adopted and enforced by NRC for 11e.(2) byproduct material, including standards issued by the Environmental Protection Agency (EPA). The Illinois Radiation Protection Act also authorizes IDNS to require licensees to provide adequate financial surety to assure that all of the IDNS requirements for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in

[2] NRC Statement of Policy published in the Federal Register January 23, 1981 (46 FR 7540–7546), a correction was published July 16, 1981 (46 FR 36969) and a revision of Criterion 9 published in the Federal Register July 21, 1983 (48 FR 33376).

connection with the generation or disposal of section 11e(2) byproduct material have been met. Authority is also provided to transfer to the Federal government funds which have been collected by the State for long-term surveillance and maintenance if custody of the byproduct material and its disposal site is transferred to the Federal government. Provisions of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, par. 1005) and Illinois regulations (32 Ill. Adm. Code Parts 200 and 332) implement the procedural requirements for the issuance of licenses and rules prescribed in sections 274o(3) (A) and (B) of the Act, and identified in Criterion 29d., e., and g. These requirements relate to such matters as opportunity for written comments, public hearings, cross examination, and judicial review.

Reference: Ill. Rev. Stat. 1985, ch. 127, par. 63b17 and 1005; Ill. Reve. Stat. 1987, ch. 111½, par. 211–229, as amended by P.A. 85–1160; 32 Ill. Adm. Code Parts 200 and 332.

30. In the enactment of any supporting legislation, the State should take into account the reservations of authority to the Commission UMTRCA as stated in 10 CFR 150.15a.

The staff has reviewed the Illinois Radiation Protection Act, as amended, and has determined that these reservations of authority to the Commission are incorporated in the Illinois statute and are adequately discussed in the program statement.

References: Ill. Rev. Stat. 1987, ch. 111½, par. 211–229, as amended; Illinois Program Statement: Application to Amend the Agreement Between Illinois and the U.S. Nuclear Regulatory Commission.

31. Section 274o(3)(C) of the Act requires that in the licensing and regulation of ores processed primarily for their source material content and for the disposal of the resulting byproduct material, States shall establish procedures which provide a written analysis of the impact on the environment of the licensing activity. This analysis shall be available to the public before commencement of hearings and shall include:

a. An assessment of the radiological and nonradiological public health impacts;

b. An assessment of any impact on any body of water or groundwater;

c. Consideration of alternatives to the licensed activities; and,

d. Consideration of long-term impacts of licensed activities.

The State's statutes and its implementing regulations provide sufficient authority for the IDNS to comply with the environmental assessment procedures required by UMTRCA. Part 332 of Illinois regulations (section 332.100) addresses the procedural requirements for environmental assessments and defines the scope of assessments and associated administrative procedures. In accordance with Criterion 29f., section 332.100 of the Illinois regulations bans major construction prior to completion of the environmental analysis.

References: Illinois Program Statement, Application to Amend the Agreement Between Illinois and the U.S. Nuclear Regulatory Commission; Ill. Rev. Stat. 1987, ch. 111½, par. 211–229, as amended by P.A.85–1160; 32 Ill. Adm. Code Part 332.

B. Regulations

32. State regulations should be reviewed for regulatory requirements, and where necessary incorporate regulatory language which is equivalent, to the extent practicable, or more stringent than regulations and standards adopted and enforced by the Commission, as required by section 274o (see 10 CFR 40, Appendix A, and 10 CFR 150.31(b)).

On January 10, 1990 (effective date: January 4, 1990), final Illinois regulations (32 Ill. Adm. Code Part 332) were submitted to NRC completing the Governor's package submitted April 11, 1989. These final regulations establish State regulations that are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including requirements and standards promulgated by the Environmental Protection Agency. It is the staff's opinion that these rules have, to the maximum extent practicable, achieved the same objective as the NRC's Part 40 regulations except that certain parts of the State regulations are more stringent than the NRC regulations and are, therefore, more restrictive than NRC regulations. The staff has identified State requirements which NRC does not address in its regulations that may also be considered to be more stringent than NRC requirements. The sections are identified below. The staff is proposing to find the following sections more stringent and in accord with section 274o of the Act only for the purpose of finding the Illinois program adequate, compatible and in compliance with statutory requirements so that authority may be relinquished lawfully to the State. The staff offers no opinion whether, as applied to any particular site, the findings required by the last paragraph of section 274o can be made.

Criteria which are more stringent than 10 CFR part 40:

1. Part 332—This part of the Illinois regulations is considered more stringent in that it does not contain a specific exemption provision such as 10 CFR 40.14(a.) or a provision for approving alternatives to these regulations such as provided for in the Introduction of appendix A to 10 CFR part 40.

2. Section 332.70—This section is considered more stringent in that the NRC performance standards have been written as technical criteria thereby eliminating the flexibility inherent in NRC regulations.

3. Section 332.170c)—This section is considered more stringent in that the annual average total radon release rate of 2 picocurie per square meter per second flux limit is more stringent than the 20 picocurie per meter square per second limit in criterion 6 of appendix A to 10 CFR part 40.

4. Subsection 332.210b)1)—This subsection banning disposal sites within a distance of 2.5 km of any municipality without the consent of the municipality is more stringent than NRC's performance objective of locating disposal sites in remote areas.

5. Section 332.220b)1)—This section is considered more stringent in that it does not allow slopes steeper than 10h:1v.

6. Section 332.240—This section is considered more stringent in that the licensee must defend its design as a 1000 year design. This section does not have the flexibility of criterion 6 of appendix A to 10 CFR part 40 that states following the 1000-year criterion, "to the extent reasonably achievable, and, in any case, for at least 200 years."

7. Section 332.250 b) and c)—subsection b) is considered more stringent in that it requires chemical treatment of the tailings which is not required in Appendix A to 10 CFR Part 40. Subsection c) is considered more stringent in that it requires groundwater restoration to levels consistent with those before operations. NRC Criterion 5B(5)(b) and (c) allows concentration values up to EPA drinking limits.

Criteria which are not in NRC's 10 CFR part 40 regulations:

1. *Section 332.20*—Definition of Buffer Zone.

2. *Section 332.20*—Definition of Minor Custodial Activities.

3. *Section 332.20*—Definition of Postclosure.

4. *Section 332.20*—Definition of Reclamation. This term is used in 10 CFR Part 40; however, this definition is not in NRC's regulations.

5. *Section 332.140*—This criterion is not in 10 CFR part 40; however, it is

generally consistent with NRC's licensing practice.

6. *Section 332.170 b)*—This criterion is not in 10 CFR part 50; however, it is consistent with 10 CFR 20.106(a).

7. *Section 332.180*—This criterion is not in 10 CFR part 40.

8. *Section 332.210*—The siting criteria in subparts (b) (1), (2), (3), (6), and (7) are not contained in 10 CFR part 40.

9. *Section 332.250 (a)*—Such a ban of release of liquids is not in NRC's regulations.

10. *Section 332.290 (e)*—No annual financial report is required by NRC.

Reference: 32 Ill. Adm. Code part 332.

C. Organizational Relationships Within the State

33. Organizational relationships should be established which will provide for an effective regulatory program for uranium mills and mill tailings. Charts should be developed which show the management organization and lines of authority. These charts should define the specific lines of supervision from program management within the radiation control group and any other department within the State responsible for contributing to the regulation of source material processing and disposal of the resulting tailings. When other State agencies or regional offices are utilized, the lines of communication and administrative control between other agencies and/or regions and the program director should be clearly drawn.

Organizational charts outlining the IDNS structure have been included in the application. From these organizational charts, it has been determined that the IDNS has a structure capable of regulating all phases of source material milling activities including the preparation of environmental assessments. This conclusion is based on the following findings: (1) The Office of Radiation Safety has been designated as the lead office within IDNS for regulating uranium and thorium processing and the resulting 11e.(2) byproduct material; and (2) the administrative, technical, legal and emergency support functions will be provided from other offices within IDNS, i.e., Office of Legal Counsel, Office of Environmental Safety, Office of Nuclear Facility Safety, and Office of Administrative Services.

Internal responsibilities have been described by the IDNS to be as follows: (1) overall program management will be implemented by the Director; (2) the Office of Radiation Safety is responsible for the licensing of radioactive materials and will be the lead office for processing all license applications and preparation of environmental assessments; (3) the Office of Environmental Safety is to assist in the evaluation of environmental impacts and to provide support for all laboratory analysis and environmental monitoring; (4) the Office of Nuclear Facility Safety will assist in the evaluation of potential radiological accidents; (5) the Office of Legal Counsel will provide assistance in all legal matters; and (6) the Office of Administrative Services will assist in budgeting and personnel management. IDNS has further stated that for those areas of environmental assessments that IDNS believes consultation to be appropriate, other State agencies or private consultants will be contracted to help in the environmental assessment. IDNS has indicated that assistance from the Illinois Department of Energy and Natural Resources and the State Water Survey Division may be sought for hydrologic assessments. NRC staff notes that the IDNS did not provide any formal agreements, such as MOUs with any of these other organizations that, if put in place, would assure their availability in a timely manner. However, IDNS has previously executed contracts with other State agencies. As an example, IDNS has executed an MOU with the Illinois Environmental Protection Agency regarding the disposal of water treatment wastes. Although the program statement did not specifically identify the source or amount of funds, it did state that IDNS will provide for funding if consultants are deemed necessary and the Office of Administrative Services will assist in contract preparation and fiscal management. For those situations where consultants are used, IDNS stated that they will seek assistance from their legal counsel to avoid conflicts of interest. IDNS has not provided any specific information about the budget or proposed budget for the portion of the radiation control program allocated to the regulation of uranium and thorium mills and 11e.(2) byproduct material. However, the IDNS has committed to the allocation of sufficient staff time to handle the uranium and thorium mills and 11e.(2) byproduct material currently in the State.

The program statement reveals that IDNS has not identified any specific medical consultants that would be available for medical questions that may be encountered with the uranium or thorium milling industry and its 11e.(2) byproduct material. The program statement states that, should medical assistance be needed, IDNS will seek assistance from a national laboratory such as Argonne National Laboratory. Such assistance has been requested and provided in the past.

Experience has shown that a scoping document is a valuable tool for bringing an environmental assessment to a satisfactory conclusion. IDNS indicated that if assistance is requested through contracts or MOUs adequate guidance such as a scoping document will be prepared by the IDNS. This document will delineate areas and scope of work to be performed within a given time constraint by each participating agency or contractor.

Reference: Illinois Program Statement, Section III.

D. Personnel

34. Personnel needed in the processing of the license application can be identified or grouped according to the following skills: Technical, Administrative, and Support.

In order to meet the requirements of UMTRCA, it is estimated that on the order of 2 to 2.75 total professional person-years' effort is necessary to process and evaluate a new conventional mill license, in-situ license, or major license renewal. A complete review of in-plant safety, completion of an environmental assessment, and use of consultants in these assessments are primary considerations in the the total professional effort for each licensing case. With respect to clerical support, one secretary is usually required to process two conventional milling applications. Legal support is also an essential element of the mill program, and the effort is believed to be a minimum of one-half staff year. In addition, consideration must be given to such post-licensing activities as issuance of monor amendments, mill inspection, and environmental monitoring. Professional staff effort for these activities is estimated at 0.5 to 1.0 person-years for each year of post-licensing activities.

Currently there are no active uranium or thorium mills processing ore for its source material content in the State of Illinois. However, as identified in the introduction, one facility located at West Chicago has been identified as a closed facility which has associated with it radiologically contaminated material on and offsite. As stated earlier, the radiologically contaminated material in and along Kress Creek and the West Branch of the DuPage River is 11e.(2) byproduct material in addition to the material on the West Chicago site. This material would come under the regulatory authority of the IDNS upon consummation of Illinois request for an amended agreement. The regulatory

activities assumed by the IDNS upon execution of the amended agreement would center mainly around decommissioning and reclamation of the West Chicago site and its associated wastes.

In the application for amendment of the agreement as updated March 14, 1990, the IDNS had identified 11 key technical personel for use in regulation uranium and thorium processing facilities and their associated 11e.(2) byproduct material. A review of these staff resumes shows that they have the necessary education, training, and experience to ensure effective implementation of a regulatory program.

Seven key administrative personnel have been identified by the IDNS who will provide the necessary management guidance and policy direction necessary to assure completion of the licensing action. The positions of the seven personnel in the IDNS structure are the director, four office managers, one assistant office manager, and one division chief.

Four key persons have been identified as providing operational support, legal support, and laboratory services. The positions of these four people are one chief legal counsel, one senior staff attorney, one section chief of radioecology, and one division chief of radiochemistry.

The NRC staff has concluded that the total professional staff-years effort which is available within the IDNS and will be directly responsible for regulating uranium and thorium mills and 11e.(2) byproduct material is within the guidelines and consists of the necessary specialities for evaluating license applications. Additionally, IDNS has states that consultants will be utilized, if necessary.

Abridged versions of the curricula vitae for key IDNS personnel involved in the regulation of source material milling facilities and 11e.(2) byproduct material are as follows (as updated by IDNS on March 14, 1990):

Administrative Personnel:

T.L. Lash, Ph.D.—Director, IDNS: Ph.D. Molecular Biophysics and Biochemistry, Yale University; M.Ph. Molecular Biophysics and Biochemistry, Yale University; B.A. Physics, Reed College. Work Experinece, 1970 to present, held positions as Postdoctoral Fellow, Yale University; Staff Scientist, NRDC; Director, Science and Public Policy, the Keystone Center; Science Director, Scientists' Institute for Public Information; Deputy Director, IDNS, and Director, IDNS.

P.D. Eastvold—Manager, Office of Radiation Safety; B.S. General Science/Nuclear Medical Technology, University of Iowa. Work Experience, 1970 to present, held positions in the Radiation Protection Office, University of Iowa; Illinois Department of Public Health; and as Manager, Office of Radiation Safety, IDNS.

G.W. Kerr, CHP—Assistant Office Manager, Office of Radiation Safety; M.A. Economics, Trinity College; B.A. Biology, Peru State College. Work Experience, 1956 to present, held positions as Senior Industrial Hygienist, Pratt and Whitney Aircraft; Technical staff positions, Atomic Energy Commission; Manager and Assistant Director for State Agreements, USNRC; Director, Office of State Programs, USNRC; Independent Consultant; and Assistant Office Manager, Office of Radiation Safety, IDNS.

C.W. Miller, Ph.D—Manager, Office of Environmental Safety; Ph.D. Bionucleonics/Health Physics, Purdue University; M.S. Meteorology, University of Michigan; B.S. Physics/Math, Ball State University. Work Experience, 1967 to present, held positions in Anderson College in Physics; Health and Safety Research Division, Oak Ridge National Laboratory; and as Nuclear Safety Scientist, Office of Nuclear Facility Safety; and Manager, Office of Environmental Safety, IDNS.

R.R. Wright—Manager, Office of Nuclear Facility Safety; Master of Public Administration, American University; B.S. Engineering, U.S. Naval Academy; Undergraduate Studies, Geology, Oklahoma University. Work Experience, 1954 to present, held positions in U.S. Navy, Nuclear Propulsion plants, Nuclear Submarines and Nuclear Weapons; Advance Science and Technology Associates Inc.; and as Manager, Office of Nuclear Facility Safety, IDNS.

D.A. Joswiak—Manager, Office of Administrative Services; M.S. Business Public Management, University of Wisconsin; M.A. Public Policy and Administration, University of Wisconsin; B.A. Political Science and Economics, University of Wisconsin. Work Experience, 1973 to present, held positions as Research Assistant, Public Expenditure Survey of Wisconsin, Inc.; Budget Analyst and Management Systems Specialist, Illinois Department of Transportation; Chief Fiscal Officer, Illinois Department of Financial Institutions; Associate Director for Administration, Illinois Emergency Services and Disaster Agency; and Manager, Office of Administrative Services, IDNS.

S.C. Collins—Chief, Division of Radioactive Materials; M.S. Radiation Science (health physics), Unversity of Arkansas School of Medical Sciences; B.A. Mathematics/Chemistry, Arkansas Tech University. Work Experience, 1967 to present, held positions as laboratory assistant and instructor, Arkansas Tech University; Health Physicist II, Arkansas State Department of Health; Nuclear Medical Science Office, U.S. Army Reserve; Public Health Physicist II, Florida Division of Health; Radiation Specialist IV, Louisiana Nuclear Energy Division; Environmental Program Manager, Louisiana Nuclear Energy Division; Nuclear Medical Science Instructor, U.S. Army Academy of Health Sciences; Radiation Protection Program Manager, Louisiana Nuclear Energy Division; and Chief, Division of Radioactive Materials, IDNS.

Administrative Support Personnel:

S.J. England—Chief Legal Counsel, Office of Legal Counsel; J.D. Boston University School of Law; B.A. University of Illinois. Work Experience, 1976 to present, held positions in City of Joliet, Illinois; Illinois Attorney General's office; Illinois Department of Transportation; and as Chief Legal Counsel, Office of Legal Counsel, IDNS.

B.P. Salus—Senior Staff Attorney, Office of Legal Counsel; J.D. Washington University School of Law; B.S. Vanderbilt University. Work Experience, 1984 to present, positions as Research Assistant, Washington University School of Law; Law Clerk to Chief Judge, U.S. District Court; and Staff Attorney, Office of Legal Counsel, IDNS.

R.A. Allen—Office of Environmental Safety; B.A. Biological Sciences, Rutgers University. Work experience, 1976 to present, held positions as Health Physicist and R.S.O., Roche Medi+Physics; Environmental Protection Group Leader, Fermi National Accelerator Laboratory; and Radioecology Section Head, Office of Environmental Safety, IDNS.

Lih-Ching Chu, Ph.D.—Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety; Ph.D, Chemistry, Washington University; M.A. Chemistry, Washington University; M.S. Chemistry, East Texas State University; B.S. Chemistry, Tankang College of Arts and Sciences. Work Experience, 1971 to present, held positions in Taiwan Military, ROC; Young-Ho Middle School, Taiwan; East Texas State University; Washington University, St. Louis; Illinois Department of Energy and Natural Resources; and as Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety, IDNS.

Technical Personnel:

J.G. Klinger—Head, Licensing Section, IDNS: M.S. Health Care Management

and Public Administration, Southwest Texas State University; B.A. Microbiology and Chemistry, University of Texas; A.A. Glendale Community College. Work Experience, 1966 to present, held positions in U.S. Marine Corps and U.S. Naval Reserve Medical Service Corps; Algebra Tutor, Glendale; Laboratory Assistant, University of Texas; Food and Drug Inspector, Texas Department of Health; Regional Food and Drug Supervisor, Texas Department of Health; Chief of Food Control, Division of Food and Drugs, Texas Department of Health; Special Assistant to the Commissioner for Board of Health Affairs, Texas Department of Health; Administrator, Licensing Branch, Bureau of Radiation Control, Texas Department of Health; and Head, Licensing Section, IDNS.

D.F. Harmon—Licensing, Office of Radiation Safety, IDNS; M.S. Physics, Vanderbilt University; B.S. Physics, Tennessee Technological University. Work Experience, 1954 to present, held positions in Military Service, U.S. Army; Ballistics Research Laboratory, Aberdeen Proving Ground, Maryland and Camp Mercury, Nevada Test Site; Chemistry Department, Vanderbilt University; Radiation Safety Branch, Division of Licensing and Regulations, U.S. NRC; Source and Special Nuclear Materials Branch, Division of Materials Licensing, U.S. NRC; Materials Branch, Division of Materials Licensing, U.S NRC; Fuels and Materials Standards Branch, Directorate of Regulatory Standards, U.S. NRC; Fuels Process System Standards Branch, Office of Standards Development, U.S. NRC; Waste Management Branch, Office of Nuclear Regulatory Research, U.S. NRC; Health Effects Branch, Office of Nuclear Regulatory Research, U.S. NRC; and Licensing, Office of Radiation Safety, IDNS.

M.H. Momeni, Ph.D.—Office of Radiation Safety, IDNS; Ph.D., Biophysics/Radiation Biology, University of Iowa; M.S. Nuclear Physics, University of Iowa; B.A. Physics/Mathematics, Luther College. Work Experience, 1962 to present, held positions as Science Teacher, Urbana Consolidated Schools; Biophysicist-Lecturer, University of California, Davis; Senior Scientist, Argonne National Laboratory; Professor and Director of Health Physics Program, San Diego State University; Scientist, Oak Ridge Associated Universities; and Health Physicists, Office of Radiation Safety, IDNS.

D.J. Scherer—Licensing, Office of Radiation Safety; M.S. Physics, Virginia Polytechnic Institute and State University; B.S. Physics, Virginia Military Institute. Work Experience, 1980 to present, held positions as graduate Teaching Assistant, VPISU; Graduate Research Assistant, Stanford Linear Accelerator Center; Nuclear Medical Science Officer, U.S. Environmental Hygiene Agency; Medical Plans Officer, Officer of the Surgeon, XVIII Airborne Corps; Chief, Health Physics Section, Womback Army Community Hospital; Assistant Health Physicist, Princeton University; Senior Health Physicist and Radiation Safety Officer, Albany Medical Center; and Health Physicist, Office of Radiation Safety, IDNS.

D.A. Huckaba, P.E.— Office of Radiation Safety; B.S. Civil Engineering, University of Missouri. Work Experience, 1969 to present, held positions as Highway Engineer, Missouri Department of Transportation; Chief Highway Engineer, MTA, Inc.; and Engineer, Office of Radiation Safety, IDNS.

G.N. Wright, P.E.—Office of Nuclear Facility Safety; Degree Work in Public Administration, Sangamon State University; M.S. Nuclear Engineering, University of Illinois; B.S. Physics/Mathematics, Milliken University. Work experience, 1965 to present, held positions in Westinghouse Electric Company; Sangamo-Weston Electronics Company; Illinois Department of Public Health; and as Senior Nuclar Engineer, Office of Radiation Safety, IDNS.

D.D. Ed—Office of Environmental Safety; B.S. Chemistry, University of Illinois. Work experience, 1972 to present, held positions in Illinois Environmental Protection Agency, Illinois Department of Public Health; and as Nuclear Safety Scientist, Office of Environmental Safety, IDNS.

T.A. Kerr—Chief, Division of Low-Level Waste Management, Office of Environmental Safety; Business Administration, University of North Carolina. Work Experience 1973 to present, held positions in U.S. Navy, Electronics Technician-Reactor operator; Supervisor Solidification Services, Chem-Nuclear Systems, Inc.; Associate Instructor, Duke Power Co.; and as Chief, Division of Low-Level Waste Management, IDNS.

M.E. Klebe, P.E.—Office of Environmental Safety; M.S. Mining Engineering, Montana College of Mineral Science and Technology; B.S. Mining Engineering, Montana College of Mineral Science and Technology. Work Experience, 1982 to present, held positions as Mining Engineer, Shell Mining Co; and Nuclear Safety Engineer, Office of Environmental Safety, IDNS.

C.G. Vinson—Office of Radiation Safety: B.S. Biology, Furman University. Work Experience, 1983 to present, held positions as Industrial Hygiene Technician, J.P. Stevens Textile Company; Environmental Engineering Specialist, Union Camp Corporation; Health Physicist and Section Manager, Bureau of Radiological Health, South Carolina Department of Health and Enironmental Control; and Health Physicist, Office of Radiation Safety, IDNS.

M. Walle—Office of Radiation Safety; B.S. Earth Sciences, Unviversity of New Orleans; ARRT, Mercy Hospital School of X-Ray Technology. Work Experience, 1965 to present, held positions as Radiological Technologist, Mercy Hospital; Nuclear Medicine Technologist, Pathology Medical Services, PC; Engineering-Geologist, U.S. Army Corps of Engineers; Civil Materials Technican, Geo, International; Civil Construction Inspector, Minority Engineers of Louisiana; Project Manager, Nuclear Gauge Radiation Safety Officer, U.S. Testing Co., Inc.; and Health Physicist, Office of Radiation Safety, IDNS.

IDNS recognizes that a skilled and experienced staff is essential to accomplishing its mission. Consequently, technical training is a high priority for the IDNS. The IDNS training coordinator is developing a comprehensive technical and managerial training program, using a wide variety of professional seminars and courses. Courses may be sponsored by either government or private sector organizations. In addition, in-house courses to supplement outside training are arranged as necessary. These in-house courses are presented either by IDNS staff or outside contractors.

The IDNS has stated that for active extraction and concentration facilities it will allocate from 2.5 to 5.75 person-years for each major licensing action. This time will be apportioned as follows: 2 to 2.75 staff years effort for technical and administrative activities; 0.5 to 1 staff year effort for legal support; and 2 staff years effort for clerical support.

Following initial licensure, IDNS plans to assign an annual average of from 0.5 to 1 full-time equivalent staffing for each license. This allocation is for inspections, environmental assessments, minor amendments and environmental surveillance. IDNS anticipates that less time might be required to administer a license authorizing only decontamination, decommissioning, disposal, or post-closure monitoring.

This appears to be a reasonable assumption on the part of IDNS.

Many of these key personnel have complementary training to their profession and several have been identified as having training in uranium mill related topics. Some of these individuals have written or published articles on uranium mill topics. The IDNS has stated that it will consult with other State agencies. Two State agencies have been identified by the IDNS at this time as providing the IDNS assistance in reviewing the impact of byproduct material on the environment. They are the Illinois Department of Energy and Natural Resources and the Illinois Environmental Protection Agency. However, the scope and depth of work to be completed by these agencies has not been identified. Because there are no indications that any uranium milling facilities are planning to operate in Illinois at this time, and because much environmental assessment work has been completed for the Kerr-McGee site, the lack of MOUs with other State agencies is not considered a matter of paramount importance at this time. The IDNS can pursue this matter at some point in the future upon first indication that such MOUs will be necessary.

References: Illinois Program Statement, Section IV, "Personnel," Section VI, "Implementation of the Regulatory Program," and Appendices F, and G.

E. Functions to be Covered

35. The State should develop procedures for licensing, inspection, preparation of environmental assessments, and operational data review.

The IDNS has stated that regulation of recovery and processing of uranium and thorium and management of 11e.(2) byproduct material may be divided into four stages: licensing, environmental assessments, inspection and enforcement, and review of operational data.

a. Licensing

The licensing evaluation or assessment should include in-plant radiological safety aspects in occupational or restricted areas and environmental impacts to populations in unrestricted areas from the facility. It is expected that the State will review, evaluate and provide documentation of these evaluations.

The IDNS has stated in its program statement that the IDNS licensing evaluations or assessments will include radiological safety aspects in occupational or restricted areas and environmental impacts to population in unrestricted areas surrounding the facilities. IDNS has stated that they will review and evaluate license applications and prepare documentation of the evaluations. The IDNS evaluation will include, as necessary, pre-licensing visits to obtain relevant information directly. Items to be evaluated include, but are not limited to, the following: general statement of proposed activities; scope of the proposed action; specific activities to be conducted; administrative procedures; facility organization and radiological safety responsibilities, authorities, and personnel qualifications; licensee audits and inspections, radiation safety program, control and monitoring; radiation safety training programs for workers; restricted area markings and access control; at existing mills, review of monitoring data, exposure records, licensee audit and inspection records, and other records applicable to existing mills; environmental monitoring; radiological emergency procedures; product transportation; tailings management facilities and procedures; site and physcial plant decommissioning procedures other than tailings; and employee exposure date and bioassay programs.

b. Environmental Assessments

The environmental evaluation should consist of a detailed and documented evaluation of the items listed in subsection 274o of the Act.

IDNS regulations, part 332, establish requirements for environmental assessments that define the scope of the assessments and specify associated administrative procedures. Part 332 requires that the following topics be included in the environmental assessment: an analysis of the radiological and nonradiological public health impacts; an analysis of any impact on surface water or groundwater; consideration of alternatives to the licensed activities; and consideration of long-term impacts of licensed activities. The IDNS has stated in their program statement that environmental assessments will consist, at a minimum, of detailed and documented evaluations of the following items: Topography; Geology; Hydrology and water quality; Meteorology; Background radiation; Tailings retention system; Interim stabilization, Reclamation; Site decommissioning programs; Radiological dose assessment which addresses source terms, exposure pathways, dose commitment to individuals, dose commitment to the population, evaluation of radiological impacts to the public to include a determination of compliance with State and Federal regulations and comparisions with background values, occupational dose, and radiological impact to biota other than man; Radiological monitoring programs to include pre-operational, operational, and post-operational monitoring; Impacts to quality and quantity of surface and groundwater; Environmental effects of accidents; and Evaluation of tailings management alternatives in terms of Illinois Regulations, part 332.

IDNS has also stated in their program statement that they will also examine the following items during preparation of environmental assessments: Ecology; Environmental effects of site preparation and facility construction; Environmental effects or use and discharge of chemicals and fuels; and Economic and social effects.

Although the IDNS regulations do not explicitly request the licensee to prepare a document called an Environmental Report, the regulations do require the licensee to provide the information in and to perform the anlayses normally done in an Environmental Report.

c. Inspection and Enforcement

As a minimum, items which should be covered during the inspection of a uranium or thorium mill should be those items evaluated in the in-plant safety review, the environmental monitoring programs, and the byproduct material management plan. In addition, the inspector should perform independent surveys and sampling. A complete inspection should be performed at least once per year.

The IDNS has stated items examined during inspections will be consistent with items evaluated during licensing. IDNS will use appropriate NRC regulatory and inspection guides for guidance. A complete inspection is to be performed at least annually. As part of the IDNS inspection program, the inspectors will perform independent surveys and sampling in addition to examining aspects of licensee performance in: Administration; Mill processes including any additions, deletions, or operational changes; Accidents/incidents; Notices, instructions, and reports to workers in accordance with 32 Ill. Adm. Code 400; Action taken on previous findings; A tour of the facilities at the mill including tailings and waste management to determine compliance with regulations and license conditions; Records; Respiratory protection and bioassay to determine compliance with license conditions and 32 Ill. Adm. Code 340;

Effluent and environmental monitoring; Training programs; Transportation and shipping; and Internal review and audit by management. Following each inspection, the inspector will confer with licensee representatives to inform them of the inspection results. The inspectors will submit a comprehensive written report to the Springfield headquarters describing inspection findings and detailing any apparent violations.

The IDNS enforcement policy is described as follows: The IDNS states that the purpose of the enforcement program is to: ensure compliance with Departmental regulations and license conditions; obtain prompt correction of violations and adverse conditions that may affect safety; deter future violations and occurrences of conditions inimical to safety; and encourage improvement of licensee performance, including prompt identification and reporting of potential safety problems.

The IDNS enforcement procedures have been described as follows: If IDNS discovers any deficiencies during an inspection, IDNS will send the licensee a written notice itemizing the area(s) of deficiency and will require the licensee to submit within 30 days of the date of the notice a written response which will state the corrective steps that have been taken by the licensee and the results achieved; the corrective steps that will be taken; and the date when full compliance will be achieved. If the licensee fails to provide an adequate response to the written notice, the IDNS normally holds a management conference with the licensee prior to taking enforcement action. The purpose of these conferences is to discuss items of deficiency or nonconformance, their significance and causes, and the licensee's corrective action. If compliance cannot be achieved through these informal conferences, IDNS will take more formal enforcement action. All non-emergency enforcement actions will be initiated by the issuance of a Preliminary Order and Notice of Opportunity for Hearing as afforded by Code 200 of the Illinois' regulations. The Order will itemize the alleged violations and direct the licensee to remedy these violations within a given time unless a hearing is requested within 10 days of the date of the Preliminary Order. In addition, the licensee may request an informal conference prior to or during the hearing. In cases where there is an imminent threat to public health and safety, IDNS has stated it is prepared to take immediate action in accordance with State law. State law provides that, if the IDNS finds that a condition exists which constitutes an immediate threat to public health due to the violation of any provisions of the Radiation Protection Act or any code, rule, regulation or order promulgated under the Radiation Protection Act and requires immediate action to protect the public health or welfare, IDNS may issue an order reciting the existence of such an immediate threat and the findings of the IDNS pertaining to the threat. The IDNS may summarily cause the abatement of such violation or may direct the Attorney General to obtain an injunction against such violator. An abatement order will be effective immediately, but will include notice of the time and place of a public hearing before the IDNS to be held within 30 days of the date of such order to assure the justification of such order. The IDNS has exercised this authority on two occasions since becoming an Agreement State. The first was in response to widespread facility contamination from leaking static eliminators, and the second was to remediate a health and safety hazard caused by inadequate radiation safety practices of a licensee.

Other remedial actions available to IDNS include orders to modify, suspend, or revoke licenses, assessment of civil penalties, and impoundment of radiation sources. Also, licenses may be modified, suspended or revoked to remove a threat to public health and safety and the environment and for any reason for which license modification, suspension, or revocation is legally authorized.

No order of the IDNS, except an order to abate an immediate threat to health, will take effect until the IDNS has found upon conclusion of such hearing that a condition exists which constitutes a violation of any provision of the Radiation Protection Act or any code, rule or regulation promulgated under the Radiation Protection Act except in the event that the right to public hearing has been waived by the licensee, in which case the order shall take effect immediately. Follow-up inspections are to be conducted as necessary by IDNS staff to verify compliance with IDNS rules and enforcement orders and to rule out willful or flagrant violations, repeated poor performance in areas of concern, and serious breakdown in management controls. All previous areas of deficiency will also be given special attention by the inspector during the following routine inspection of the facility.

As a result of program reviews conducted on December 7–18, 1987 and January 29 through February 9, 1990, the NRC staff concluded that the IDNS has an acceptable licensing program which is capable of determining whether a licensee or applicant can operate safely and in compliance with the regulations and license conditions. Likewise, during these program reviews, the NRC staff concluded that the IDNS has an acceptable compliance program which assures that licensee activities are being conducted in compliance with regulatory requirements and consistent with good safety practices.

d. Operational Data Review

To enhance radiological assessment capability and to confirm doses to receptors in unrestricted areas, States should require the semiannual reports, preferably within 60 days after January 1, and July 1, of each year, specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous six months of operation. This data shall be reported in a manner that will permit the regulatory agency to confirm the potential annual radiation does to the public. Additionally, all data from the radiological and non-radiological environmental monitoring program will also be submitted for the same time periods and frequency. The data will be reported in a manner that will allow the regulatory agency to confirm the dose to receptors.

IDNS has stated that according to 32 I11. Adm. Code 332, IDNS will require licensees to submit written reports at least semiannualy that identify quantities of redionuclides released to unrestricted areas in liquid, gaseous, and particulate effluents during specified periods of operation. IDNS will also require submission of data from licensee environmental monitoring programs. Written reports and data must be for identical periods and frequencies and in a form permitting confirmation of potential annual radiation doses to the public.

Section 332.290f of 32 Ill. Adm. Code 332 requires semiannual reports to be filed within 60 days after January 1 and July 1 of each year covering the previous six months.

References: Illinois Program Statement, Section VI, "Implementation of the Regulatory Program" and 32 Ill. Adm. Code Parts 200, 332, and 340.

F. Instrumentation

36. The State should have available both field and laboratory instrumentation sufficient to ensure the licensee's control of materials and to validate the licensee's measurements.

IDNS has available an extensive inventory of field and laboratory

instrumentation for radiation detection and measurment. A fully equipped radiochemistry facility has been established for performing radiochemical analysis of radioactive samples. Additionally, the IDNS has a well equipped mobile field laboratory which can be used for routine sample analysis while in a standby mode for emergency response. IDNS has also reported that they have twenty-two portable instrumentation kits available for use. Appendix H to the program statement provides an overview of the laboratory and instrument capabilities and lists the instrumentation available to the State.

IDNS has participated in a cross-comparison study on analysis of radionuclides in drinking water. The study has been completed and IDNS is expecting certification at time of this analysis.

Athough IDNS did not provide any information on Equipment Calibration procedures, the program reviews conducted December 7–19, 1987 and January 29 through February 8, 1990 found that the State had adequate instrumentation for surveying licensee operations and satisfied the requirements for calibrating its radiation detection equipment.

References: Illinois Program Statement, Section V, "Instrumentation," and Appendix H.

III. Staff Conclusion

Section 274d of the Atomic Energy of 1954, as amended, states:

> The Commission shall enter into an agreement under subsection b of this section with any State if—
>
> (1) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and
>
> (2) the Commission finds that the State program is in accordance with the requirements of subsection 0, and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

The amendment to the State of Illinois agreement is for source material milling activities including the resulting 11e.(2) byproduct material to which section 274o of the Act applies. Section 274o provides that the State may adopt standards for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose. The staff has identified some sections of the State's regulations that are considered to be more stringent than NRC's regulations. The NRC staff has concluded that the program of the State of Illinois is in accordance with the requirements of section 274o of the Act and meets the NRC criteria for an amended agreement. The State's statutes, regulations, personnel, and licensing, inspection, and administrative procedures are compatible with, or more stringent than, those of the Commission and are adequate to protect the public health and safety with respect to the materials covered by the proposed amendment to the Agreement.

Dated at Rockville, Maryland, this 23d day of March 1990.

For the U.S. Nuclear Regulatory Commission.

Fred Combs,

Acting Director, State Programs, Office of Governmental and Public Affairs.

Appendix A—Proposed Amendment Number One to the Agreement Between the United States Nuclear Regulatory Commission and the State of Illinois for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, the Governor of the State of Illinois is authorized under Illinois Revised Statutes, 1987, ch. 111½, par. 216b and ch. 111½; par., 241–19 to enter into this Agreement with the Commission; and,

Whereas, on June 1, 1987, an Agreement between the Commission and the State of Illinois became effective which transferred regulatory authority over byproduct material as defined in section 11.e(1) of the act, source materials, special nuclear materials in quantities not sufficient to form a critical mass, and the land disposal of source, byproduct, and spcial nuclear material received from other persons; and,

Whereas, Article III of that Agreement provides that the Agreement may be amended, upon application by the State and approval by the Commission, to include the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material; and,

Whereas, Governor of the State of Illinois certified on _____ that the State of Illonois (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, the Commission found on _____ that the program of the State for the regulation of the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and,

Whereas, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, the Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to Amendment Number One to the Agreement; and,

Whereas, Amendment Number One to the Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, Therefore, it is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

1) Article I of the Agreement is hereby amended to expand the scope of the Agreement to include the extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in Section 11e.(2) of the Act. As amended, Article I now reads as follows:

Article I

Subject to the exceptions provided in Articles II, IV and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following:

A. Byproduct material as defined in Section 11e.(1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass; and,

D. The land disposal of source, byproduct, and special nuclear material received from other persons.

Pursuant to Article III, and subject to the exceptions provided in Articles II, IV and V,

the Commission shall discontinue, as of the effective date of this Amendment Number One to this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following:

E. The extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in section 11e.(2) of the Act.

2) Article II of the Agreement is hereby amended by inserting "A." before "This Agreement," by redesignating paragraphs A. through D. as subparagraphs 1. through 4., by deleting paragraph E., relating to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and by adding a new paragraph B., relating to authorities that will be retained by the Commission. As amended, Article II now reads as follows:

Article II

A. This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

1. The construction and operation of any production or utilization facility;

2. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

3. The disposal into the ocean or sea of byproduct, source, or special nuclear waster materials as defined in regulations or orders of the Commission; and,

4. The disposal of such other byproduct, source, or special nuclear materials as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct materials as defined in section 11e.(2) of the Atomic Energy Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance, and ownership of such byproduct material and of land used as a disposal stie for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the license shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to paragraph 2.b. of this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger the public health, safety, welfare, or the environment;

d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. of this section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or a State;

e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety, and other actions as the Commission deems necessary; and,

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance of such disposal sites on land held in trust by the United States for any Indian tribe or land owned by an Indian tribe and subject to a restriction against alienation imposed by the United States.

3) Article IX of the Agreement is hereby amended by redesignating it Article X and by inserting a new Article IX. As amended, Articles IX and X now read as follows:

Article IX

In the licensing and regulation of byproduct material as defined in section 11e.(2) of the Act, or of any activity which results in the production of such material, the State shall comply with the provisions of section 274o of the Act. If, in such licensing and regulation, the State requires financial surety arrangements for the reclamation or long-term surveillance of such material,

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custory of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and,

B. Such State surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term surveillance of such byproduct material and its disposal site.

Article X

This Agreement shall become effective on June 1, 1987, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

4) The Agreement effective June 1, 1987 remains in effect except as modified by amendments contained in Paragraphs 1), 2), and 3) of this Amendment Number One.

5) This Amendment Number one to the June 1, 1987 Agreement shall become effective on _____, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland, in triplicate, this ____ day of _____.

For the United States Nuclear Regulatory Commission.

Chairman.

Done at Springfield, Illinois, in triplicate, this ____ day of _____.

For the State of Illinois.

Governor.

[FR Doc. 90-7198 Filed 3-27-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-294]

Michigan State University TRIGA Nuclear Reactor; Order Terminating Facility License

By application dated January 20, 1989, as supplemented on May 4, 1989, the Michigan State University (the licensee) requested from the Nuclear Regulatory Commission (the Commission) authorization to dispose of the component parts of its TRIGA Nuclear Reactor located in East Lansing, Michigan and to terminate Facility License No. R-114. A Notice of "Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License," was published in the **Federal Register** on March 2, 1989, (54 FR 8853). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action. By Order dated July 11, 1989, the Commission authorized dismantling of the facility and disposal of component parts as proposed in the licensee's decommissioning plan.

The reactor fuel has been removed from the core and shipped to a Department of Energy facility. The reactor facility has been completely dismantled and all requirements

pertaining to residual radioactivity, personnel and external radiation exposure, and fuel disposition have been met. Confirmatory radiological surveys verified that the facility met the recommended regulatory guidance for release of the facility for unrestricted use. Accordingly the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission's Order dated July 11, 1989. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in 10 CFR chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, based on the application filed by the Michigan State University, located in East Lansing, Michigan, and pursuant to sections 104 and 161 b, i, of the Atomic Energy Act of 1954, as amended, and in 10 CFR 50.82(f), Facility License No. R–114 is terminated as of the date of this Order. In accordance with 10 CFR part 51, the Commission has determined that the issuance of this termination Order will have no significant impact. The Environmental Assessment was published in the **Federal Register** on April 4, 1990 (55 FR 12612).

For further details with respect to this action see (1) the application for termination of Facility License No. R–114, dated January 20, 1989 as supplemented, (2) the Commission's Safety Evaluation related to the termination of the license, (3) the Environmental Assessment, and (4) the Notice of "Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License," published in the **Federal Register** on March 2, 1989 (54 FR 8853). Each of these items is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, 20555. Copies of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland this 5th day of April 1990.

For the Nuclear Regulatory Commission

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90–8392 Filed 4–10–90; 8:45 am]

BILLING CODE 7590–01–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Wednesday and Thursday, April 25–26, 1990 at the Madison Hotel, 15th & M Street NW., Washington, DC.

The Full Commission will convene each day at 9 a.m. in Executive Chambers 1, 2 and 3 on the second floor. All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 90–7576 Filed 4–10–90; 8:45 am]

BILLING CODE 6820–BW–M

DEPARTMENT OF TRANSPORTATION

[Docket 46700]

1990 U.S.-Japan Gateways Proceeding; Erratum

In the Notice of Hearing* served March 30, 1990, the location of the hearing, the International Trade Commission Building, was erroneously listed as 100 E Street, SW. The correct address is 500 E Street, SW., Washington, DC. The notice was correct in all other respects.

John J. Mathias,

Chief Administrative Law Judge.

[FR Doc. 90–8327 Filed 4–10–90; 8:45 am]

BILLING CODE 4910–62–M

Office of the Secretary

Proposed Termination of Commuter Authority Held by Propheter Construction Company d/b/a Propheter Aviation

AGENCY: Department of Transportation.

ACTION: Notice of proposed termination of commuter authority—Order 90–4–7, order to show cause.

SUMMARY: The Department of Transportation is proposing to terminate the commuter air carrier authority held by Propheter Construction Company, Inc. d/b/a/ Propheter Aviation on the basis that Propheter has failed to demonstrate that it remains fit, willing, and able to provide commuter air service as required by section 401(r) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's proposed termination should file their responses by April 20, 1990, with the Air Carrier Fitness Divison, P–56, Department of Transportation, 400 Seventh Street SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment B to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2343.

Dated: April 5, 1990.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90–8326 Filed 4–10–90; 8:45 am]

BILLING CODE 4910–62–M

* Published in the **Federal Register** at 55 FR 12771, April 5, 1990.

National Highway Traffic Safety Administration

International Harmonization of Safety Standards; Calendar of Meetings

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of meetings.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) will continue its participation during this year in the international meetings to harmonize U.S. and foreign motor vehicle safety standards. These meetings will be conducted by the Working Party on the Construction of Vehicles (WP29) under the Principal Working Party on Road Transport of the United Nations' Economic Commission for Europe (ECE), and by the six Meetings of Experts (formerly called Groups of Rapporteurs) of WP29. The NHTSA currently represents the United States in all of the Meetings of Experts except those on Pollution and on Noise.

DATES: For a list of scheduled meetings, see the Supplementary Information section of this Notice. Inquiries or comments related to specific meetings should be made at least two weeks preceding that meeting.

FOR FURTHER INFORMATION CONTACT: Francis J. Turpin, Office of International Harmonization (NOA–05), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–2114).

SUPPLEMENTARY INFORMATION: This calendar consists of those ECE meetings currently scheduled. It is published for information and planning purposes and the meeting dates and places are subject to change. NHTSA attendance at these meetings will be affected by agenda

content, priorities and availability of travel funds.

May 21–23, 1990

Meeting of Experts on General Safety Provisions (GRSG), Fifty-Sixth Session—Geneva, Switzerland.

June 5–8, 1990

Meeting of Experts on Passive Safety (GRSP), Seventh Session—Geneva, Switzerland.

June 18, 1990

Administrative Committee for the Coordination of Work of WP29(AC.2), Forty-Third Session—Geneva, Switzerland.

June 19–22, 1990

Working Party on the Construction of Vehicles (WP–29), Ninety-First Session—Geneva, Switzerland.

August 20–22, 1990

Meeting of Experts on Brakes and Running Gear (GRRF), Twenty-Sixth Session—Geneva, Switzerland.

August 23–24, 1990

Meeting of Experts on Noise (GRB), Seventeenth Session—Geneva, Switzerland.

August 28–31, 1990

Meeting of Experts on Lighting and Light-Signalling (GRE), Twenty-Fourth Session—Geneva, Switzerland.

September 10–14, 1990

Meeting of Experts on General Safety Provisions (GRSG), Fifty-Seventh Session—Geneva, Switzerland.

October 22, 1990

Administrative Committee for the Coordination of Work of WP29 (AC.2), Forty-Fourth Session—Geneva, Switzerland.

October 23–26, 1990

Working Party on the Construction of Vehicles (WP–29), Ninety-Second Session—Geneva, Switzerland.

November 19–22, 1990

These meeting days will be assigned to one of the following Meetings of Experts, namely, Lighting and Light-Signalling (GRE), Brakes and Running Gear (GRRF), or, Passive Safety (GRSP); depending on workload and projected availability of documents as determined at the June, 1990 session of the Working Party.

December 10–14, 1990

Meeting of Experts on Passive Safety (GRSP), Eighth Session—Geneva, Switzerland.

The following meetings took place earlier this year.

January 10–12, 1990

Meeting of Experts on Pollution and Energy (GRPE), Twenty-First Session—Geneva, Switzerland.

February 26–March 1, 1990

Meeting of Experts on Brakes and Running Gear (GRRF), Twenty-Fifth Session—Geneva, Switzerland.

March 12, 1990

Administrative Committee for the Coordination of Work of WP29 (AC.2), Forty-Second Session—Geneva, Switzerland.

March 13–16, 1990

Working Party on the Construction of Vehicles (WP–29), Ninetieth Session—Geneva, Switzerland.

April 9–13, 1990

Meeting of Experts on Lighting and Light-Signalling (GRE), Twenty-Third Session—Geneva, Switzerland.

Issued on April 5, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90–8324 Filed 4–10–90; 8:45 am]

BILLING CODE 4910–59–M

Urban Mass Transportation Administration

Intent To Prepare an Environmental Impact Statement for Mass Transit Improvements in the Mid-Coast Corridor of San Diego County, California

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice to prepare an environmental impact statement.

SUMMARY: The Urban Mass Transportation Administration (UMTA) and the San Diego Metropolitan Transit Development Board (MTDB) intend to prepare an Environmental Impact Statement (EIS) for mass transit improvements in the Mid-Coast Corridor of San Diego County, California. UMTA and MTDB will prepare the EIS in conformance with the National Environental Policy Act of 1969 (NEPA: 42 U.S.C. 4321), the Regulations for Implementing the Procedural Requirements of NEPA, Council on Envionmental Quality (40 CFR parts 1500–1508), Envionmental Impact and Related Procedures, UMTA (49 CFR part 622), and related statutes and Executive Orders.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Hom, Urban Mass Transportation Administration, 211 Main Street, Suite 1160, San Francisco, California 94105; telephone: (415) 744–3115.

SUPPLEMENTARY INFORMATION:

Scoping

UMTA and MTDB invite the public and affected Federal, State, and local agencies to participate in determining the alternatives to be evaluated in the EIS and identifying the significant issues related to the alternatives. Written materials describing the scoping process, the proposed alternatives, the expected impact areas, a citizen involvement program, and the preliminary work schedule are being mailed to affected Federal, State, and local agencies and to interested parties of record. Others may request these scoping materials by calling or writing to:

Mr. Dennis Wahl, San Diego Metropolitan Transit Development Board, 1255 Imperial Avenue, Suite 1000, San Diego, California 92101; telephone: (619) 231–1466.

MTDB will two hold public scoping meetings to describe the scope of the study and receive comments on it. The times, dates, and locations of these meetings are:

Thursday, April 26, 1990 at 2 p.m., MTDB Board of Directors Room, 1255 Imperial Avenue, 10th Floor, San Diego, California

Thursday, April 26, 1990 at 7:30 p.m., Regents Park Community Room at Regents Medical Center, 4150 Regents Park Row, La Jolla, Califonria

At the scoping meetings, MTDB staff will present the alternatives to be considered for improving transit service in the Mid-Coast Corridor and identify the known social, economic, and environmental impacts to be evaluated during the study. Methods for citizen involvement and the work schedule for the study will also be discussed. Comments are invited regarding the alternatives, the impacts to be assessed, and the evaluation criteria to be used in making a decision on the preferred alternative. During scoping, comments should focus on these topics and not on an individual preference for a particular alternative. Comments may be made either orally at the meetings or in writing not later than May 25, 1990.

Corridor Description

The Mid-Coast Corridor extends north from Old Town to Del Mar Heights Road along the Santa Fe Railroad corridor and the Interstate 5 freeway corridor. The corridor's roadways experience peak

period congestion due to commuting associated with travel to downtown San Diego and other employment centers located in the corridor. Major travel into, within, and through the corridor includes: (1) Corridor residents commuting to employment locations within and outside the corridor, (2) trips to major corridor activity centers including Sorrento Valley, the Golden Triangle/University Ceity, and the University of California, San Diego, and (3) area residents commuting through the corridor to reach employment, shopping, and recreational locations in downtown San Diego, Old Town, Mission Valley, Kerney Mesa, and the coastal communities of La Jolla, Pacific Beach, Mission Beach, Ocean Beach, and Point Loma.

Alternatives

The alternatives proposed for consideration in the UMTA EIS include: No Build, Transportation System Management (TSM), High Occupancy Vehicle (HOV), and various extensions of the North Light Rail Transit (LRT) Line beyond Old Town. The No-Build Alternative will maintain the current level of transit service in the corridor. The TSM and HOV alternatives include additional express bus service, transit centers, park-and-ride locations, and preferential bus treatments for buses ranging from queue jumpers to HOV lanes on I-5. The LRT alternatives include four possible terminal options: (1) North to Del Mar Heights Road, (2) north to Del Mar Heights Road with a spur to Miramar Naval Air Station (NAS), (3) north to the University of California, San Diego, and (4) north to the University of California, San Diego with a spur to Miramar NAS. In addition, three LRT alignment options will be considered in the vicinity of the University of California, San Diego. Under the LRT alternatives, bus service would be modified to feed into the station locations.

Probable Effects

In the EIS UMTA and MTDB propose to evaluate all significant social, economic, and environmental impacts of the alternatives under consideration. The impacts analyzed will include the increased noise, vibration, electromagnetic interference, residential and business displacements, changes in development patterns and land use, community disruption resulting from the cumulative effect of the other impacts, traffic and parking changes, effects on historic sites, degradation of local air quality and water quality especially near stations, disruptions or parklands, recreational areas, wetlands, floodplains, ecologically sensitive areas, natural and man-made hazardous materials sites, and the aesthetic quality of the area. These impacts will be evaluated both for the construction period and for the long-term operation of each alternatives. Measures to mitigate harm will be explored for any adverse impacts identified.

Construction of any alternatives other than the No-Build will require increased capital outlays for several years and are expected to increase transit service and patronage with associated increases in transit operating and maintenance costs. The alternatives are expected to have no significant impacts on energy use or regional air quality.

During scoping, comments on the probable effects should focus on the completeness of the proposed set of impacts to be evaluated. Other impacts or criteria judged relevant to decision-making should be identified.

Issued on: April 3, 1990.

Louis F. Mraz, Jr.,

Western Area Director.

[FR Doc. 90-8325 Filed 4-10-90; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 3, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2409, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505-.

Form number: None.

Type of Review: New collection.

Title: Questions for The Annual Meeting of The Reserve City Bankers on Assistance for Eastern Europe.

Description: The Treasury Department has been considering various mechanisms which will best focus the U.S. private financial sector on revitalizing the financial health of Eastern Europe. This will be used as market research to help develop the most appropriate mechanism.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 25.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: One time only.

Estimated Total Reporting Burden: 6 hours.

Clearance Officer: Dale A. Morgan (202) 566-2693, Departmental Offices, Room 3142, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-8320 Filed 4-10-90; 8:45 am]

BILLING CODE 4810-25-M

federal register

Wednesday
April 11, 1990

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Safety and Health Standards: Welding, Cutting and Brazing; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Safety and Health Standards: Welding, Cutting and Brazing

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule; Redesignation and other non-substantive revisions.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is reorganizing its existing part 1910 Standards pertaining to Welding, Cutting and Brazing as a first step in an effort to revise these standards comprehensively. The existing standard is long and not well organized, with paragraphs covering specific operations, such as arc welding, appearing ahead of more useful general provisions, such as for fire protection. This reorganization will facilitate the standard's use by employers and other users, and will also facilitate the substantive revision of the standards planned for the future. Also included in this reorganization action are some minor non-substantive changes, such as the addition of metric equivalent units.

EFFECTIVE DATE: This action will be effective on May 11, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3467, 200 Constitution Ave. NW., Washington, DC 20210, (202) 523–8151. This reorganization document was prepared by Wendell Glasier, Directorate of Safety Standards Programs.

SUPPLEMENTARY INFORMATION:

I. Background

The existing OSHA standard covering safety in Welding, Cutting and Brazing (29 CFR 1910.252) was promulgated in 1971, under the authority of section 6(a) of the Occupational Safety and Health Act of 1970. Except for minor deletions, no changes have been made to the standard since that time. Changes in welding technology, welding practices and in the National Consensus Standards on which the rule was based have all occurred since 1971. The OSHA welding standard requires updating to reflect current technology and practices in the industry, and to provide consistency with current industry standards.

OSHA's attempts to prepare a proposed revision to the current welding standard have been hindered by the standard's great length and ineffective organization. Because of the standard's length and complexity, it is difficult to read and to locate specific requirements. Employers and other users have complained that the length and complexity make it difficult to understand, and comply with, the standard's provisions. The current standard's organization, with paragraphs dealing with specific processes, such as oxy-fuel and arc welding, located ahead of more general provisions, such as those for ventilation and fire protection, presents a problem that needs to be corrected. Instead of trying to solve the problems of length, complexity and poor organization concurrently with a substantive revision of the standard's provisions, OSHA has decided to proceed in two phases. This action will address the problems of organization and complexity, while future rulemaking will address the substantive revision of the standard's provisions.

II. Benefits of Reorganization

OSHA believes that the reorganization will be very beneficial. Most importantly, the creation of a more logical format and the renumbering of the standard will make it easier for both the public and OSHA to use. The provisions having a more general application will now be located at the beginning of the standard where they can be more easily located. Also, because the current § 1910.252 will be converted into four sections (1910.252–1910.255), all its provisions will become much more accessible. In addition, the standards will follow the Office of the Federal Register's guidelines for proper paragraph numbering and cross-referencing. OSHA also anticipates that this action will facilitate the Agency's planned substantive revision of the welding standard by eliminating the problems of reorganization and renumbering, which otherwise would have to be addressed in that rulemaking. The phase two proposed revision will be accomplished through rulemaking procedures which will provide appropriate public notice and opportunity for comment.

OSHA wishes to emphasize that this action does not alter the substance of the present welding, cutting and brazing standards *in any way*, nor does it affect their present scope and application. Because there are no substantive amendments to OSHA's standards in this action, providing the public prior notice and an opportunity for comment is not required.

III. Other Changes

In addition to the reorganization and renumbering, certain other minor, non-substantive changes are included in this action. These are: (1) the addition of equivalent metric units where various measurements were formerly given only in non-metric units; (2) changes to reflect the transfer of functions among Federal agencies; (3) the deletion of six formerly "reserved" provisions; (4) the deletion of one non-substantive provision adopted in error; (5) the correction of one provision's erroneous internal reference; and (6) the updating of the mailing addresses of the organizations that published the source standards.

One error in the welding standards that was previously identified by OSHA will not be corrected in this document. On November 30, 1987, as part of the Electrical Safety-Related Work Practices notice of proposed rulemaking, existing § 1910.252(a)(6)(iv)(*d*)(*2*), was listed as one of several OSHA general industry standards that contain inaccurate references to OSHA's electrical standards (52 FR 45530, 45541). OSHA proposed at that time to correct the reference (*Id.* at 45545). Although this welding provision will be redesignated as § 1910.253(f)(4)(iv)(B), as a result of the reorganization announced in today's **Federal Register** publication, any amendments to the provision's reference to the electrical standards will be made as a result of the electrical safety rulemaking.

1. Addition of Metric Units

The existing welding, cutting and brazing standard contains many measurements, such as those for weight, length, volume, pressure and temperature. No metric equivalents were provided for any of these measurements. Since the policy of the Federal Government is now to provide metric units whenever feasible, equivalent metric units have been added to each of these measurements.

2. Change to Reflect Transfer of Authority Between Federal Agencies

The existing welding standard contains several references in § 1910.252(f) to the U.S. Bureau of Mines as the approving authority for respiratory protective equipment. The current authority for the approval of such devices lies with the Mine Safety and Health Administration (MSHA) of the U.S. Department of Labor, and with the National Institute for Occupational Safety and Health (NIOSH) (See 30 CFR

part II). Consequently, references pertaining to the approval of respiratory protection devices have been changed to reflect the transfer of authority.

3. Deletion of Reserved Sections

The existing OSHA welding standard contains six provisions which are presently "reserved." The regulatory text was removed by OSHA, either by the 1978 "Revocation of Selected General and Special Industry Safety and Health Standards" (43 FR 49726) or by the 1984 "Revocation of Advisory and Repetitive Standards" (49 FR 5318). Since these "reserved" provisions contain no regulatory text, they serve no useful purpose and are therefore deleted. Provisions following the formerly "reserved" provisions have been redesignated to maintain the correct numerical or alphabetical sequence. The "reserved" provisions which are being removed are listed below:

1910.252(a)(3)(v)(*e*)
1910.252(a)(5)(v)(*b*)
1910.252(a)(7)(iii)(*d*)
1910.252(c)(5)
1910.252(e)(2)(ii)(*f*)
1928.252(f)(1)(ii)

4. Deletion of Non-Substantive Provision

Paragraph (a)(3)(v)(*b*) of existing § 1910.252 contains no substantive requirements other than requiring compliance with "subdivision (*i*)" of § 1910.252(a)(3)(v). However, there is no subdivision (*i*). Since this provision neither contains nor references substantive requirements, it is being deleted. The provisions which follow the deleted provision have been redesignated to maintain the correct numerical sequence.

5. Correction of Internal Reference

Paragraph (a)(2)(vi)(*a*)(*3*) of existing § 1910.252 contains a reference to "paragraph (a)(8) of this section." There is no paragraph (a)(8). OSHA has concluded, through reference to ANSI Z49.1–1967, that the correct reference should be to paragraph (a)(6)(vi)(*a*)(*8*). This action corrects the erroneous reference, which, after reorganization, appears as paragraph (f)(6)(i)(H) of § 1910.253 (see conversion table).

6. Updating of Addresses of Source Standards Organizations

The standards organizations listed in existing § 1910.254 contained, except for the American National Standards Institute, outdated addresses. The addresses have been updated in redesignated § 1910.257.

For convenience of reference, OSHA has prepared the following conversion table which lists all the "old" provisions in subpart Q and, alongside each, the equivalent "new" provision.

Welding, Cutting and Brazing Conversion Table—Part 1910, Subpart Q

Old Provisions	*New Provisions*
§ 1910.251	§ 1910.251
Definitions	*Definitions*
	(No changes)
Old Provisions	*New Provisions*
§ 1910.252	§ 1910.253
Welding, cutting, and brazing	*Oxygen-fuel gas welding and cutting*
(a)(1)(i)–(iv)	(a)(1)–(4)
(a)(2)(i)(*a*)–(*d*)	(b)(1)(i)–(iv)
(a)(2)(ii)(*a*)–(*d*)	(b)(2)(i)–(iv)
(a)(2)(iii)	(b)(3)
(a)(2)(iii)(*a*)–(*b*)	(b)(3)(i)–(ii)
(a)(2)(iv)(*a*)–(*d*)	(b)(4)(i)–(iv)
(a)(2)(v)(*a*)	(b)(5)(i)
(a)(2)(v)(*b*)(*1*)–(*17*)	(b)(5)(ii)(A)–(Q)
(a)(2)(v)(*b*)(*18*)(*i*)–(*ii*)	(b)(5)(ii)(R)(*1*)–(*2*)
(a)(2)(v)(*c*)(*1*)–(*12*)	(b)(5)(iii)(A)–(L)
(a)(3)(i)(*a*)–(*e*)	(c)(1)(i)–(v)
(a)(3)(ii)(*a*)–(*f*)	(c)(2)(i)–(vi)
(a)(3)(iii)(*a*)–(*e*)	(c)(3)(i)–(v)
(a)(3)(iv)(*a*)–(*h*)	(c)(4)(i)–(viii)
(a)(3)(v)(*a*)–(*h*)	(c)(5)(i)–(vi)* **
(a)(4)(i)(*a*)(*1*)	(d)(1)(i)(A)
(a)(4)(i)(*a*)(*1*)(*i*)–(*ii*)	(d)(1)(i)(A)(*1*)–(*2*)
(a)(4)(i)(*a*)(*2*)	(d)(1)(i)(B)
(a)(4)(i)(*b*)(*1*)–(*3*)	(d)(1)(ii)(A)–(C)
(a)(4)(i)(*c*)(*1*)–(*2*)	(d)(1)(iii)(A)–(B)
(a)(4)(ii)(*a*)–(*c*)	(d)(2)(i)–(iii)
(a)(4)(iii)(*a*)–(*j*)	(d)(3)(i)–(x)
(a)(4)(iv)(*a*)–(*c*)	(d)(4)(i)–(iii)
(a)(4)(v)(*a*)–(*b*)	(d)(5)(i)–(ii)
(a)(5)(i)–(ii)	(e)(1)–(2)
(a)(5)(iii)(*a*)–(*b*)	(e)(3)(i)–(ii)
(a)(5)(iii)(*b*)(*1*)–(*3*)	(e)(3)(ii)(A)–(C)
(a)(5)(iii)(*b*)(*3*)(*i*)–(*iv*)	(e)(3)(ii)(C)(*1*)–(4)
(a)(5)(iii)(*c*)–(*d*)	(e)(3)(iii)–(iv)
(a)(5)(iv)(*a*)–(*h*)	(e)(4)(i)–(viii)
(a)(5)(v)(*a*)–(*f*)	(e)(5)(i)–(v)*
(a)(5)(vi)(*a*)–(*d*)	(e)(6)(i)–(iv)
(a)(6)(i)(*a*)–(*b*)	(f)(1)(i)–(ii)
(a)(6)(ii)(*a*)–(*c*)	(f)(2)(i)–(iii)
(a)(6)(iii)	(f)(3)
(a)(6)(iv)(*a*)(*1*)–(*5*)	(f)(4)(i)(A)–(E)
(a)(6)(iv)(*b*)(*1*)–(*3*)	(f)(4)(ii)(A)–(C)
(a)(6)(iv)(*c*)(*1*)–(*6*)	(f)(4)(iii)(A)–(F)
(a)(6)(iv)(*d*)(*1*)–(*5*)	(f)(4)(iv)(A)–(E)
(a)(6)(v)(*a*)(*1*)–(*4*)	(f)(5)(i)(A)–(D)
(a)(6)(v)(*b*)(*1*)–(*5*)	(f)(5)(ii)(A)–(E)
(a)(6)(vi)(*a*)(*1*)–(*9*)	(f)(6)(i)(A)–(I)
(a)(6)(vi)(*b*)–(*c*)	(f)(6)(ii)–(iii)
(a)(6)(vi)(*d*)(*1*)–(*2*)	(f)(6)(iv)(A)–(B)
(a)(6)(vi)(*e*)	(f)(6)(v)
(a)(6)(vii)(*a*)	(f)(7)(i)
(a)(6)(vii)(*a*)(*1*)–(*4*)	(f)(7)(i)(A)–(D)
(a)(6)(vii)(*b*)–(*f*)	(f)(7)(ii)–(vi)
(a)(7)(i)(*a*)–(*d*)	(g)(1)(i)–(iv)
(a)(7)(ii)(*a*)	(g)(2)(i)
(a)(7)(ii)(*a*)(*1*)–(*2*)	(g)(2)(i)(A)–(B)
(a)(7)(ii)(*b*)	(g)(2)(ii)
(a)(7)(ii)(*b*)(*1*)–(*3*)	(g)(2)(ii)(A)–(C)
(a)(7)(ii)(*c*)	(g)(2)(iii)
(a)(7)(iii)(*a*)–(*e*)	(g)(3)(i)–(iv)*
Old Provisions	*New Provisions*
§ 1910.252	§ 1910.254
Welding, cutting, and brazing	*Arc welding and cutting*
(b)(1)(i)–(iii)	(a)(1)–(3)
(b)(2)(i)	(b)(1)
(b)(2)(ii)(*a*)–(*b*)	(b)(2)(i)–(ii)
(b)(2)(ii)(*b*)(*1*)–(*8*)	(b)(2)(ii)(A)–(H)
(b)(2)(iii)	(b)(3)
(b)(2)(iii)(*a*)	(b)(3)(i)
(b)(2)(iii)(*a*)(*1*)–(*2*)	(b)(3)(i)(A)–(B)
(b)(2)(iii)(*b*)	(b)(3)(ii)
(b)(2)(iii)(*b*)(*1*)–(*2*)	(b)(3)(ii)(A)–(B)
(b)(2)(iii)(*c*)–(*d*)	(b)(3)(iii)–(iv)
(b)(2)(iv)(*a*)–(*f*)	(b)(4)(i)–(vi)
(b)(3)(i)	(c)(1)
(b)(3)(ii)(*a*)–(*e*)	(c)(2)(i)–(v)
(b)(3)(iii)(*a*)–(*d*)	(c)(3)(i)–(iv)
(b)(3)(iii)(*d*)(*1*)–(*2*)	(c)(3)(iv)(A)–(B)
(b)(4)(i)–(viii)	(d)(1)–(8)
(b)(4)(ix)(*a*)–(*c*)	(d)(9)(i)–(iii)
Old Provisions	*New Provisions*
§ 1910.252	§ 1910.255
Welding, cutting, and brazing	*Resistance welding*
(c)(1)(i)–(iv)	(a)(1)–(4)
(c)(2)(i)–(ix)	(b)(1)–(9)
(c)(3)(i)–(vi)	(c)(1)–(6)
(c)(4)(i)–(ii)	(d)(1)–(2)
(c)(5)–(6)	(e)*
Old Provisions	*New Provisions*
§ 1910.252	§ 1910.252
Welding, cutting, and brazing	*General requirements*
(d)(1)	(a)(1)
(d)(1)(i)–(iii)	(a)(1)(i)–(iii)
(d)(2)	(a)(2)
(d)(2)(i)–(ii)	(a)(2)(i)–(ii)
(d)(2)(iii)(*a*)	(a)(2)(iii)(A)
(d)(2)(iii)(*a*)(*1*)–(*4*)	(a)(2)(iii)(A)(*1*)–(*4*)
(d)(2)(iii)(*b*)	(a)(2)(iii)(B)
(d)(2)(iv)–(vi)	(a)(2)(iv)–(vi)
(d)(2)(vi)(*a*)–(*d*)	(a)(2)(vi)(A)–(D)
(d)(2)(vii)–(xiii)	(a)(2)(vii)–(xiii)
(d)(2)(xiii)(*a*)–(*d*)	(a)(2)(xiii)(A)–(D)
(d)(2)(xiv)	(a)(2)(xiv)
(d)(2)(xiv)(*a*)–(*c*)	(a)(2)(xiv)(A)–(C)
(d)(2)(xiv)(*c*)(*1*)–(*3*)	(a)(2)(xiv)(C)(*1*)–(*3*)
(d)(2)(xiv)(*d*)–(*g*)	(a)(2)(xiv)(D)–(G)
(d)(2)(xv)	(a)(2)(xv)
(d)(3)(i)–(ii)	(a)(3)(i)–(ii)
(d)(4)(i)–(ii)	(a)(4)(i)–(ii)
(e)(1)(i)–(ii)	(b)(1)(i)–(ii)
(e)(2)(i)(*a*)–(*d*)	(b)(2)(i)(A)–(D)
(e)(2)(ii)(*a*)–(*l*)	(b)(2)(ii)(A)–(I)*
(e)(2)(iii)	(b)(2)(iii)
(e)(3)(i)	(b)(3) [(i) deleted, because no (ii)]
(e)(4)(i)–(vii)	(b)(4)(i)–(vii)
(f)(1)(i)	(c)(1)(i)
(f)(1)(i)(*a*)–(*c*)	(c)(1)(i)(A)–(C)
(f)(1)(ii)–(v)	(c)(1)(ii)–(iv)*
(f)(1)(v)(*a*)–(*c*)	(c)(1)(iv)(A)–(C)
(f)(2)(i)	(c)(2)(i)
(f)(2)(i)(*a*)–(*c*)	(c)(2)(i)(A)–(C)
(f)(2)(ii)	(c)(2)(ii)
(f)(3)	(c)(3)
(f)(3)(i)–(ii)	(c)(3)(i)–(ii)
(f)(4)(i)–(v)	(c)(4)(i)–(v)
(f)(5)(i)–(ii)	(c)(5)(i)–(ii)
(f)(6)(i)–(ii)	(c)(6)(i)–(ii)
(f)(7)(i)–(iii)	(c)(7)(i)–(iii)
(f)(8)	(c)(8)
(f)(9)(i)–(ii)	(c)(9)(i)–(ii)
(f)(10)	(c)(10)
(f)(11)(i)–(ii)	(c)(11)(i)–(ii)
(f)(12)–(13)	(c)(12)–(13)
(g)(1)(i)–(vii)	(d)(1)(i)–(vii)
(g)(2)(i)–(ii)	(d)(2)(i)–(ii)
Old Provisions	*New Provisions*
§ 1910.253	§ 1910.256
Sources of standards	*Sources of standards*
Old Provisions	*New Provisions*
§ 1910.254	§ 1910.257

Standards organizations	*Standards organizations*
(a)	(a)
(b)	(b)
(c)	(c)
(d)	(d)
(e)	(e)
(f)	(f)

* Provisions currently listed as "Reserved" in 29 CFR part 1910, subpart Q, are being deleted.

** Existing paragraph (a)(3)(v)(*b*) is being deleted because it contains no substantive requirements and refers to a provision which does not exist.

IV. Regulatory Impact Assessment

OSHA finds that this action consists solely of the reorganization and renumbering of existing standards and other minor changes which do not alter or add to the requirements presently applicable to welding, cutting and brazing operations. As already noted, the action will make the welding standards easier to use by the public and OSHA, and will facilitate the planned revision of these standards by OSHA. There will be, however, *no* increase in cost or burden to employers, since the present substantive requirements are not being altered.

OSHA therefore finds that this is not a major rule which requires preparation of a regulatory impact analysis pursuant to Executive Order No. 12291. For the same reason, OSHA further certifies that this action will not have significant economic impact on a substantial number of small entities and, therefore, there is no need to prepare a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). OSHA will, of course, perform these analyses as appropriate in conjunction with any ensuing project to revise the welding standards.

V. Exemption From Notice and Comment Procedures

With regard to this action, OSHA has determined that it is not required to follow procedures for public notice and comment rulemaking under either section 4 of the Administrative Procedure Act (5 U.S.C. 553) or under section 6(b) of the Occupational Safety and Health Act (29 U.S.C. 655(b)). This action involves a reorganization of existing standards and other minor changes which do not affect the substantive requirements or coverage of the standards themselves. This action does not modify or revoke existing rights or obligations, nor does it establish new ones. OSHA, therefore, finds that notice and public procedure are impracticable and unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B). For the same reasons, OSHA also finds that in accordance with 29 CFR 1911.5, good cause exists for dispensing with the public notice and comment procedures prescribed in section 6(b) of the Occupational Safety and Health Act.

VI. List of Subjects

List of Subjects in 29 CFR Part 1910

Asbestos, Chemicals, Diving, Electric power, Electronic products, Fire prevention, Gases, Hazardous substances, Health records, Incorporation by reference, Labeling, Laboratories, Noise control, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

VII. Authority

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 5 U.S.C. 553, Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR part 1911, subpart Q of part 1910 of 29 CFR is revised to read as set forth below.

Signed at Washington, DC, this 30th day of March, 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

The authority citation for subpart Q of part 1910 is revised to read:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; 5 U.S.C. 553; 29 CFR part 1911.

2. Part 1910 is amended by revising subpart Q to read as follows:

Subpart Q—Welding, Cutting and Brazing

Sec.

Subpart Q—Welding, Cutting and Brazing

§ 1910.251 Definitions. As used in this subpart:

(a) *Welder* and *welding operator* mean any operator of electric or gas welding and cutting equipment.

(b) *Approved* means listed or approved by a nationally recognized testing laboratory. Refer to § 1910.155(c)(3) for definitions of listed and approved, and § 1910.7 for nationally recognized testing laboratory.

(c) All other welding terms are used in accordance with American Welding Society—Terms and Definitions—A3.0—969.

§ 1910.252 General requirements.

(a) *Fire prevention and protection*—(1) *Basic precautions.* For elaboration of these basic precautions and of the special precautions of paragraph (a)(2) of this section as well as a delineation of the fire protection and prevention responsibilities of welders and cutters, their supervisors (including outside contractors) and those in management on whose property cutting and welding is to be performed, see Standard for Fire Prevention in Use of Cutting and Welding Processes, NFPA Standard 51B, 1962. The basic precautions for fire prevention in welding or cutting work are:

(i) *Fire hazards.* If the object to be welded or cut cannot readily be moved, all movable fire hazards in the vicinity shall be taken to a safe place.

(ii) *Guards.* If the object to be welded or cut cannot be moved and if all the fire hazards cannot be removed, then guards shall be used to confine the heat, sparks, and slag, and to protect the immovable fire hazards.

(iii) *Restrictions.* If the requirements stated in paragraphs (a)(1)(i) and (a)(1)(ii) of this section cannot be followed then welding and cutting shall not be performed.

(2) *Special precautions.* When the nature of the work to be performed falls within the scope of paragraph (a)(1)(ii) of this section certain additional precautions may be necessary:

(i) *Combustible material.* Wherever there are floor openings or cracks in the flooring that cannot be closed, precautions shall be taken so that no readily combustible materials on the floor below will be exposed to sparks which might drop through the floor. The same precautions shall be observed with regard to cracks or holes in walls, open doorways and open or broken windows.

(ii) *Fire extinguishers.* Suitable fire extinguishing equipment shall be

maintained in a state of readiness for instant use. Such equipment may consist of pails of water, buckets of sand, hose or portable extinguishers depending upon the nature and quantity of the combustible material exposed.

(iii) *Fire watch.* (A) Fire watchers shall be required whenever welding or cutting is performed in locations where other than a minor fire might develop, or any of the following conditions exist:

(*1*) Appreciable combustible material, in building construction or contents, closer than 35 feet (10.7 m) to the point of operation.

(*2*) Appreciable combustibles are more than 35 feet (10.7 m) away but are easily ignited by sparks.

(*3*) Wall or floor openings within a 35-foot (10.7 m) radius expose combustible material in adjacent areas including concealed spaces in walls or floors.

(*4*) Combustible materials are adjacent to the opposite side of metal partitions, walls, ceilings, or roofs and are likely to be ignited by conduction or radiation.

(B) Fire watchers shall have fire extinguishing equipment readily available and be trained in its use. They shall be familiar with facilities for sounding an alarm in the event of a fire. They shall watch for fires in all exposed areas, try to extinguish them only when obviously within the capacity of the equipment available, or otherwise sound the alarm. A fire watch shall be maintained for at least a half hour after completion of welding or cutting operations to detect and extinguish possible smoldering fires.

(iv) *Authorization.* Before cutting or welding is permitted, the area shall be inspected by the individual responsible for authorizing cutting and welding operations. He shall designate precautions to be followed in granting authorization to proceed preferably in the form of a written permit.

(v) *Floors.* Where combustible materials such as paper clippings, wood shavings, or textile fibers are on the floor, the floor shall be swept clean for a radius of 35 feet (10.7 m). Combustible floors shall be kept wet, covered with damp sand, or protected by fire-resistant shields. Where floors have been wet down, personnel operating arc welding or cutting equipment shall be protected from possible shock.

(vi) *Prohibited areas.* Cutting or welding shall not be permitted in the following situations:

(A) In areas not authorized by management.

(B) In sprinklered buildings while such protection is impaired.

(C) In the presence of explosive atmospheres (mixtures of flammable gases, vapors, liquids, or dusts with air), or explosive atmospheres that may develop inside uncleaned or improperly prepared tanks or equipment which have previously contained such materials, or that may develop in areas with an accumulation of combustible dusts.

(D) In areas near the storage of large quantities of exposed, readily ignitible materials such as bulk sulfur, baled paper, or cotton.

(vii) *Relocation of combustibles.* Where practicable, all combustibles shall be relocated at least 35 feet (10.7 m) from the work site. Where relocation is impracticable, combustibles shall be protected with flameproofed covers or otherwise shielded with metal or asbestos guards or curtains.

(viii) *Ducts.* Ducts and conveyor systems that might carry sparks to distant combustibles shall be suitably protected or shut down.

(ix) *Combustible walls.* Where cutting or welding is done near walls, partitions, ceiling or roof of combustible construction, fire-resistant shields or guards shall be provided to prevent ignition.

(x) *Noncombustible walls.* If welding is to be done on a metal wall, partition, ceiling or roof, precautions shall be taken to prevent ignition of combustibles on the other side, due to conduction or radiation, preferably by relocating combustibles. Where combustibles are not relocated, a fire watch on the opposite side from the work shall be provided.

(xi) *Combustible cover.* Welding shall not be attempted on a metal partition, wall, ceiling or roof having a combustible covering nor on walls or partitions of combustible sandwich-type panel construction.

(xii) *Pipes.* Cutting or welding on pipes or other metal in contact with combustible walls, partitions, ceilings or roofs shall not be undertaken if the work is close enough to cause ignition by conduction.

(xiii) *Management.* Management shall recognize its responsibility for the safe usage of cutting and welding equipment on its property and:

(A) Based on fire potentials of plant facilities, establish areas for cutting and welding, and establish procedures for cutting and welding, in other areas.

(B) Designate an individual responsible for authorizing cutting and welding operations in areas not specifically designed for such processes.

(C) Insist that cutters or welders and their supervisors are suitably trained in the safe operation of their equipment and the safe use of the process.

(D) Advise all contractors about flammable materials or hazardous conditions of which they may not be aware.

(xiv) *Supervisor.* The Supervisor:

(A) Shall be responsible for the safe handling of the cutting or welding equipment and the safe use of the cutting or welding process.

(B) Shall determine the combustible materials and hazardous areas present or likely to be present in the work location.

(C) Shall protect combustibles from ignition by the following:

(*1*) Have the work moved to a location free from dangerous combustibles.

(*2*) If the work cannot be moved, have the combustibles moved to a safe distance from the work or have the combustibles properly shielded against ignition.

(*3*) See that cutting and welding are so scheduled that plant operations that might expose combustibles to ignition are not started during cutting or welding.

(D) Shall secure authorization for the cutting or welding operations from the designated management representative.

(E) Shall determine that the cutter or welder secures his approval that conditions are safe before going ahead.

(F) Shall determine that fire protection and extinguishing equipment are properly located at the site.

(G) Where fire watches are required, he shall see that they are available at the site.

(xv) *Fire prevention precautions.* Cutting or welding shall be permitted only in areas that are or have been made fire safe. When work cannot be moved practically, as in most construction work, the area shall be made safe by removing combustibles or protecting combustibles from ignition sources.

(3) *Welding or cutting containers*—(i) *Used containers.* No welding, cutting, or other hot work shall be performed on used drums, barrels, tanks or other containers until they have been cleaned so thoroughly as to make absolutely certain that there are no flammable materials present or any substances such as greases, tars, acids, or other materials which when subjected to heat, might produce flammable or toxic vapors. Any pipe lines or connections to the drum or vessel shall be disconnected or blanked.

(ii) *Venting and purging.* All hollow spaces, cavities or containers shall be vented to permit the escape of air or gases before preheating, cutting or welding. Purging with inert gas is recommended.

(4) *Confined spaces*—(i) *Accidental contact.* When arc welding is to be suspended for any substantial period of time, such as during lunch or overnight, all electrodes shall be removed from the holders and the holders carefully located so that accidental contact cannot occur and the machine be disconnected from the power source.

(ii) *Torch valve.* In order to eliminate the possibility of gas escaping through leaks or improperly closed valves, when gas welding or cutting, the torch valves shall be closed and the gas supply to the torch positively shut off at some point outside the confined area whenever the torch is not to be used for a substantial period of time, such as during lunch hour or overnight. Where practicable, the torch and hose shall also be removed from the confined space.

(b) *Protection of personnel*—(1) *General*—(i) *Railing.* A welder or helper working on platforms, scaffolds, or runways shall be protected against falling. This may be accomplished by the use of railings, safety belts, life lines, or some other equally effective safeguards.

(ii) *Welding cable.* Welders shall place welding cable and other equipment so that it is clear of passageways, ladders, and stairways.

(2) *Eye protection*—(i) *Selection.* (A) Helmets or hand shields shall be used during all arc welding or arc cutting operations, excluding submerged arc welding. Helpers or attendants shall be provided with proper eye protection.

(B) Goggles or other suitable eye protection shall be used during all gas welding or oxygen cutting operations. Spectacles without side shields, with suitable filter lenses are permitted for use during gas welding operations on light work, for torch brazing or for inspection.

(C) All operators and attendants of resistance welding or resistance brazing equipment shall use transparent face shields or goggles, depending on the particular job, to protect their faces or eyes, as required.

(D) Eye protection in the form of suitable goggles shall be provided where needed for brazing operations not covered in paragraphs (b)(2)(i)(A) through (b)(2)(i)(C) of this section.

(ii) *Specifications for protectors.* (A) Helmets and hand shields shall be made of a material which is an insulator for heat and electricity. Helmets, shields and goggles shall be not readily flammable and shall be capable of withstanding sterilization.

(B) Helmets and hand shields shall be arranged to protect the face, neck and ears from direct radiant energy from the arc.

(C) Helmets shall be provided with filter plates and cover plates designed for easy removal.

(D) All parts shall be constructed of a material which will not readily corrode or discolor the skin.

(E) Goggles shall be ventilated to prevent fogging of the lenses as much as practicable.

(F) All glass for lenses shall be tempered, substantially free from striae, air bubbles, waves and other flaws. Except when a lens is ground to provide proper optical correction for defective vision, the front and rear surfaces of lenses and windows shall be smooth and parallel.

(G) Lenses shall bear some permanent distinctive marking by which the source and shade may be readily identified.

(H) The following is a guide for the selection of the proper shade numbers. These recommendations may be varied to suit the individual's needs.

Welding operation	Shade No.
Shielded metal-arc welding—1/16-, 3/32-, 1/8-, 5/32-inch electrodes	10
Gas-shielded arc welding (nonferrous)—1/16-, 3/32-, 1/8-, 5/32-inch electrodes	11
Gas-shielded arc welding (ferrous)—1/16-, 3/32-, 1/8-, 5/32-inch electrodes	12
Shielded metal-arc welding:	
5/16-, 7/32-, 1/4-inch electrodes	12
5/16-, 3/8-inch electrodes	14
Atomic hydrogen welding	10–14
Carbon arc welding	14
Soldering	2
Torch brazing	3 or 4
Light cutting, up to 1 inch	3 or 4
Medium cutting, 1 inch to 6 inches	4 or 5
Heavy cutting, 6 inches and over	5 or 6
Gas welding (light) up to 1/8 inch	4 or 5
Gas welding (medium) 1/8 inch to 1/2 inch	5 or 6
Gas welding (heavy) 1/2 inch and over	6 or 8

Note: In gas welding or oxygen cutting where the torch produces a high yellow light, it is desirable to use a filter or lens that absorbs the yellow or sodium line in the visible light of the operation.

(I) All filter lenses and plates shall meet the test for transmission of radiant energy prescribed in ANSI Z87.1—1968—American National Standard Practice for Occupational and Educational Eye and Face Protection.

(iii) *Protection from arc welding rays.* Where the work permits, the welder should be enclosed in an individual booth painted with a finish of low reflectivity such as zinc oxide (an important factor for absorbing ultraviolet radiations) and lamp black, or shall be enclosed with noncombustible screens similarly painted. Booths and screens shall permit circulation of air at floor level. Workers or other persons adjacent to the welding areas shall be protected from the rays by noncombustible or flameproof screens or shields or shall be required to wear appropriate goggles.

(3) *Protective clothing—General requirements.* Employees exposed to the hazards created by welding, cutting, or brazing operations shall be protected by personal protective equipment in accordance with the requirements of § 1910.132 of this part. Appropriate protective clothing required for any welding operation will vary with the size, nature and location of the work to be performed.

(4) *Work in confined spaces*—(i) *General.* As used herein confined space is intended to mean a relatively small or restricted space such as a tank, boiler, pressure vessel, or small compartment of a ship.

(ii) *Ventilation.* Ventilation is a prerequisite to work in confined spaces. For ventilation requirements see paragraph (c) of this section.

(iii) *Securing cylinders and machinery.* When welding or cutting is being performed in any confined spaces the gas cylinders and welding machines shall be left on the outside. Before operations are started, heavy portable equipment mounted on wheels shall be securely blocked to prevent accidental movement.

(iv) *Lifelines.* Where a welder must enter a confined space through a manhole or other small opening, means shall be provided for quickly removing him in case of emergency. When safety belts and lifelines are used for this purpose they shall be so attached to the welder's body that his body cannot be jammed in a small exit opening. An attendant with a preplanned rescue procedure shall be stationed outside to observe the welder at all times and be capable of putting rescue operations into effect.

(v) *Electrode removal.* When arc welding is to be suspended for any substantial period of time, such as during lunch or overnight, all electrodes shall be removed from the holders and the holders carefully located so that accidental contact cannot occur and the machine disconnected from the power source.

(vi) *Gas cylinder shutoff.* In order to eliminate the possibility of gas escaping through leaks of improperly closed valves, when gas welding or cutting, the torch valves shall be closed and the fuel-gas and oxygen supply to the torch positively shut off at some point outside the confined area whenever the torch is not to be used for a substantial period of time, such as during lunch hour or overnight. Where practicable the torch and hose shall also be removed from the confined space.

(vii) *Warning sign.* After welding operations are completed, the welder shall mark the hot metal or provide some other means of warning other workers.

(c) *Health protection and ventilation*—(1) *General*—(i) Contamination. The requirements in this paragraph have been established on the basis of the following three factors in arc and gas welding which govern the amount of contamination to which welders may be exposed:

(A) Dimensions of space in which welding is to be done (with special regard to height of ceiling).

(B) Number of welders.

(C) Possible evolution of hazardous fumes, gases, or dust according to the metals involved.

(ii) *Screens.* When welding must be performed in a space entirely screened on all sides, the screens shall be so arranged that no serious restriction of ventilation exists. It is desirable to have the screens so mounted that they are about 2 feet (0.61 m) above the floor unless the work is performed at so low a level that the screen must be extended nearer to the floor to protect nearby workers from the glare of welding.

(iii) *Maximum allowable concentration.* Local exhaust or general ventilating systems shall be provided and arranged to keep the amount of toxic fumes, gases, or dusts below the maximum allowable concentration as specified in § 1910.1000 of this part.

(iv) Precautionary labels. A number of potentially hazardous materials are employed in fluxes, coatings, coverings, and filler metals used in welding and cutting or are released to the atmosphere during welding and cutting. These include but are not limited to the materials itemized in paragraphs (c)(5) through (c)(12) of this section. The suppliers of welding materials shall determine the hazard, if any, associated with the use of their materials in welding, cutting, etc.

(A) All filler metals and fusible granular materials shall carry the following notice, as a minimum, on tags, boxes, or other containers:

CAUTION

Welding may produce fumes and gases hazardous to health. Avoid breathing these fumes and gases. Use adequate ventilation. See ANSI Z49.1 – 1967 Safety in Welding and Cutting published by the American Welding Society.

(B) Brazing (welding) filler metals containing cadmium in significant amounts shall carry the following notice on tags, boxes, or other containers:

WARNING

CONTAINS CADMIUM—POISONOUS FUMES MAY BE FORMED ON HEATING

Do not breathe fumes. Use only with adequate ventilation such as fume collectors, exhaust ventilators, or air-supplied respirators. See ANSI Z49.1 – 1967. If chest pain, cough, or fever develops after use call physician immediately.

(C) Brazing and gas welding fluxes containing fluorine compounds shall have a cautionary wording to indicate that they contain fluorine compounds. One such cautionary wording recommended by the American Welding Society for brazing and gas welding fluxes reads as follows:

CAUTION

CONTAINS FLUORIDES

This flux when heated gives off fumes that may irritate eyes, nose and throat.

1. Avoid fumes—use only in well-ventilated spaces.
2. Avoid contact of flux with eyes or skin.
3. Do not take internally.

(2) *Ventilation for general welding and cutting*—(i) *General.* Mechanical ventilation shall be provided when welding or cutting is done on metals not covered in paragraphs (c)(5) through (c)(12) of this section. (For specific materials, see the ventilation requirements of paragraphs (c)(5) through (c)(12) of this section.)

(A) In a space of less than 10,000 cubic feet (284 m^3) per welder.

(B) In a room having a ceiling height of less than 16 feet (5 m).

(C) In confined spaces or where the welding space contains partitions, balconies, or other structural barriers to the extent that they significantly obstruct cross ventilation.

(ii) *Minimum rate.* Such ventilation shall be at the minimum rate of 2,000 cubic feet (57 m^3) per minute per welder, except where local exhaust hoods and booths as per paragraph (c)(3) of this section, or airline respirators approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health, pursuant to the provisions of 30 CFR part 11, are provided. Natural ventilation is considered sufficient for welding or cutting operations where the restrictions in paragraph (c)(2)(i) of this section are not present.

(3) *Local exhaust hoods and booths.* Mechanical local exhaust ventilation may be by means of either of the following:

(i) *Hoods.* Freely movable hoods intended to be placed by the welder as near as practicable to the work being welded and provided with a rate of airflow sufficient to maintain a velocity in the direction of the hood of 100 linear feet (30 m) per minute in the zone of welding when the hood is at its most remote distance from the point of welding. The rates of ventilation required to accomplish this control velocity using a 3-inch (7.6 cm) wide flanged suction opening are shown in the following table:

Welding zone	Minimum air flow [1] cubic feet/minute	Duct diameter, inches [2]
4 to 6 inches from arc or torch	150	3
6 to 8 inches from arc or torch	275	3½
8 to 10 inches from arc or torch	425	4½
10 to 12 inches from arc or torch	600	5½

[1] When brazing with cadmium bearing materials or when cutting on such materials increased rates of ventilation may be required.
[2] Nearest half-inch duct diameter based on 4,000 feet per minute velocity in pipe.

(ii) *Fixed enclosure.* A fixed enclosure with a top and not less than two sides which surround the welding or cutting operations and with a rate of airflow sufficient to maintain a velocity away from the welder of not less than 100 linear feet (30 m) per minute.

(4) *Ventilation in confined spaces*—(i) *Air replacement.* All welding and cutting operations carried on in confined spaces shall be adequately ventilated to prevent the accumulation of toxic materials or possible oxygen deficiency. This applies not only to the welder but also to helpers and other personnel in the immediate vicinity. All air replacing that withdrawn shall be clean and respirable.

(ii) *Airline respirators.* In such circumstances where it is impossible to provide such ventilation, airline respirators or hose masks approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health, pursuant to the provisions of 30 CFR part 11, for this purpose, shall be used.

(iii) *Self-contained units.* In areas immediately hazardous to life, hose masks with blowers or self-contained breathing equipment shall be used. The breathing equipment shall be approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health.

(iv) *Outside helper.* Where welding operations are carried on in confined spaces and where welders and helpers are provided with hose masks, hose masks with blowers or self-contained breathing equipment approved by the Mine Safety and Health Administration

and the National Institute for Occupational Safety and Health, a worker shall be stationed on the outside of such confined spaces to insure the safety of those working within.

(v) *Oxygen for ventilation.* Oxygen shall never be used for ventilation.

(5) *Fluorine compounds*—(i) *General.* In confined spaces, welding or cutting involving fluxes, coverings, or other materials which contain fluorine compounds shall be done in accordance with paragraph (c)(4) of this section. A fluorine compound is one that contains fluorine, as an element in chemical combination, not as a free gas.

(ii) *Maximum allowable concentration.* The need for local exhaust ventilation or airline respirators for welding or cutting in other than confined spaces will depend upon the individual circumstances. However, experience has shown such protection to be desirable for fixed-location production welding and for all production welding on stainless steels. Where air samples taken at the welding location indicate that the fluorides liberated are below the maximum allowable concentration, such protection is not necessary.

(6) *Zinc*—(i) *Confined spaces.* In confined spaces welding or cutting involving zinc-bearing base or filler metals or metals coated with zinc-bearing materials shall be done in accordance with paragraph (c)(4) of this section.

(ii) *Indoors.* Indoors, welding or cutting involving zinc-bearing base or filler metals coated with zinc-bearing materials shall be done in accordance with paragraph (c)(3) of this section.

(7) *Lead*—(i) *Confined spaces.* In confined spaces, welding involving lead-base metals (erroneously called lead-burning) shall be done in accordance with paragraph (c)(4) of this section.

(ii) *Indoors.* Indoors, welding involving lead-base metals shall be done in accordance with paragraph (c)(3) of this section.

(iii) *Local ventilation.* In confined spaces or indoors, welding or cutting involving metals containing lead, other than as an impurity, or involving metals coated with lead-bearing materials, including paint shall be done using local exhaust ventilation or airline respirators. Outdoors such operations shall be done using respiratory protective equipment approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health, pursuant to the provisions of 30 CFR part 11, for such purposes. In all cases, workers in the immediate vicinity of the cutting operation shall be protected as necessary by local exhaust ventilation or airline respirators.

(8) *Beryllium.* Welding or cutting indoors, outdoors, or in confined spaces involving beryllium-containing base or filler metals shall be done using local exhaust ventilation and airline respirators unless atmospheric tests under the most adverse conditions have established that the workers' exposure is within the acceptable concentrations defined by § 1910.1000 of this part. In all cases, workers in the immediate vicinity of the welding or cutting operations shall be protected as necessary by local exhaust ventilation or airline respirators.

(9) *Cadmium*—(i) *General.* Welding or cutting indoors or in confined spaces involving cadmium-bearing or cadmium-coated base metals shall be done using local exhaust ventilation or airline respirators unless atmospheric tests under the most adverse conditions have established that the workers' exposure is within the acceptable concentrations defined by § 1910.1000 of this part. Outdoors such operations shall be done using respiratory protective equipment such as fume respirators approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health, pursuant to the provisions of 30 CFR part 11, for such purposes.

(ii) *Confined space.* Welding (brazing) involving cadmium-bearing filler metals shall be done using ventilation as prescribed in paragraph (c)(3) or (c)(4) of this section if the work is to be done in a confined space.

(10) *Mercury.* Welding or cutting indoors or in a confined space involving metals coated with mercury-bearing materials including paint, shall be done using local exhaust ventilation or airline respirators unless atmospheric tests under the most adverse conditions have established that the workers' exposure is within the acceptable concentrations defined by § 1910.1000 of this part. Outdoors such operations shall be done using respiratory protective equipment approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health, pursuant to the provisions of 30 CFR part 11, for such purposes.

(11) *Cleaning compounds*—(i) *Manufacturer's instructions.* In the use of cleaning materials, because of their possible toxicity or flammability, appropriate precautions such as manufacturers instructions shall be followed.

(ii) *Degreasing.* Degreasing and other cleaning operations involving chlorinated hydrocarbons shall be so located that no vapors from these operations will reach or be drawn into the atmosphere surrounding any welding operation. In addition, trichloroethylene and perchlorethylene should be kept out of atmospheres penetrated by the ultraviolet radiation of gas-shielded welding operations.

(12) *Cutting of stainless steels.* Oxygen cutting, using either a chemical flux or iron powder or gas-shielded arc cutting of stainless steel, shall be done using mechanical ventilation adequate to remove the fumes generated.

(13) *First-aid equipment.* First-aid equipment shall be available at all times. All injuries shall be reported as soon as possible for medical attention. First aid shall be rendered until medical attention can be provided.

(d) *Industrial applications*—(1) *Transmission pipeline*—(i) *General.* The requirements of paragraphs (b) and (c) of this section and § 1910.254 of this part shall be observed.

(ii) *Field shop operations.* Where field shop operations are involved for fabrication of fittings, river crossings, road crossings, and pumping and compressor stations the requirements of paragraphs (a), (b), and (c) of this section and § § 1910.253 and 1910.254 of this part shall be observed.

(iii) *Electric shock.* When arc welding is performed in wet conditions, or under conditions of high humidity, special protection against electric shock shall be supplied.

(iv) *Pressure testing.* In pressure testing of pipelines, the workers and the public shall be protected against injury by the blowing out of closures or other pressure restraining devices. Also, protection shall be provided against expulsion of loose dirt that may have become trapped in the pipe.

(v) *Construction standards.* The welded construction of transmission pipelines shall be conducted in accordance with the Standard for Welding Pipe Lines and Related Facilities, API Std. 1104—1968.

(vi) *Flammable substance lines.* The connection, by welding, of branches to pipelines carrying flammable substances shall be performed in accordance with Welding or Hot Tapping on Equipment Containing Flammables, API Std. PSD No. 2201—1963.

(vii) *X-ray inspection.* The use of X-rays and radioactive isotopes for the inspection of welded pipeline joints shall be carried out in conformance with the American National Standard Safety Standard for Non-Medical X-ray and Sealed Gamma-Ray Sources, ANSI Z54.1—1963.

(2) *Mechanical piping systems*—(i) *General.* The requirements of

paragraphs (a), (b), and (c) of this section and §§ 1910.253 and 1910.254 of this part shall be observed.

(ii) *X-ray inspection.* The use of X-rays and radioactive isotopes for the inspection of welded piping joints shall be in conformance with the American National Standard Safety Standard for Non-Medical X-ray and Sealed Gamma-Ray Sources, ANSI Z54.1—1963.

§ 1910.253 Oxygen-fuel gas welding and cutting.

(a) *General requirements.*—(1) *Flammable mixture.* Mixtures of fuel gases and air or oxygen may be explosive and shall be guarded against. No device or attachment facilitating or permitting mixtures of air or oxygen with flammable gases prior to consumption, except at the burner or in a standard torch, shall be allowed unless approved for the purpose.

(2) *Maximum pressure.* Under no condition shall acetylene be generated, piped (except in approved cylinder manifolds) or utilized at a pressure in excess of 15 psig (103 kPa gauge pressure) or 30 psia (206 kPa absolute). (The 30 psia (206 kPa absolute) limit is intended to prevent unsafe use of acetylene in pressurized chambers such as caissons, underground excavations or tunnel construction.) This requirement is not intended to apply to storage of acetylene dissolved in a suitable solvent in cylinders manufactured and maintained according to U.S. Department of Transportation requirements, or to acetylene for chemical use. The use of liquid acetylene shall be prohibited.

(3) *Apparatus.* Only approved apparatus such as torches, regulators or pressure-reducing valves, acetylene generators, and manifolds shall be used.

(4) *Personnel.* Workmen in charge of the oxygen or fuel-gas supply equipment, including generators, and oxygen or fuel-gas distribution piping systems shall be instructed and judged competent by their employers for this important work before being left in charge. Rules and instructions covering the operation and maintenance of oxygen or fuel-gas supply equipment including generators, and oxygen or fuel-gas distribution piping systems shall be readily available.

(b) *Cylinders and containers*—(1) *Approval and marking.* (i) All portable cylinders used for the storage and shipment of compressed gases shall be constructed and maintained in accordance with the regulations of the U.S. Department of Transportation, 49 CFR parts 171–179.

(ii) Compressed gas cylinders shall be legibly marked, for the purpose of identifying the gas content, with either the chemical or the trade name of the gas. Such marking shall be by means of stenciling, stamping, or labeling, and shall not be readily removable. Whenever practical, the marking shall be located on the shoulder of the cylinder. This method conforms to the American National Standard Method for Marking Portable Compressed Gas Containers to Identify the Material Contained, ANSI Z48.1—1954.

(iii) Compressed gas cylinders shall be equipped with connections complying with the American National Standard Compressed Gas Cylinder Valve Outlet and Inlet Connections, ANSI B57.1—1965.

(iv) All cylinders with a water weight capacity of over 30 pounds (13.6 kg) shall be equipped with means of connecting a valve protection cap or with a collar or recess to protect the valve.

(2) *Storage of cylinders—general.* (i) Cylinders shall be kept away from radiators and other sources of heat.

(ii) Inside of buildings, cylinders shall be stored in a well-protected, well-ventilated, dry location, at least 20 feet (6.1 m) from highly combustible materials such as oil or excelsior. Cylinders should be stored in definitely assigned places away from elevators, stairs, or gangways. Assigned storage spaces shall be located where cylinders will not be knocked over or damaged by passing or falling objects, or subject to tampering by unauthorized persons. Cylinders shall not be kept in unventilated enclosures such as lockers and cupboards.

(iii) Empty cylinders shall have their valves closed.

(iv) Valve protection caps, where cylinder is designed to accept a cap, shall always be in place, hand-tight, except when cylinders are in use or connected for use.

(3) *Fuel-gas cylinder storage.* Inside a building, cylinders, except those in actual use or attached ready for use, shall be limited to a total gas capacity of 2,000 cubic feet (56 m^3) or 300 pounds (135.9 kg) of liquefied petroleum gas.

(i) For storage in excess of 2,000 cubic feet (56 m^3) total gas capacity of cylinders or 300 (135.9 kg) pounds of liquefied petroleum gas, a separate room or compartment conforming to the requirements specified in paragraphs (f)(6)(i)(H) and (f)(6)(i)(I) of this section shall be provided, or cylinders shall be kept outside or in a special building. Special buildings, rooms or compartments shall have no open flame for heating or lighting and shall be well ventilated. They may also be used for storage of calcium carbide in quantities not to exceed 600 (271.8 kg) pounds, when contained in metal containers complying with paragraphs (g)(1)(i) and (g)(1)(ii) of this section.

(ii) Acetylene cylinders shall be stored valve end up.

(4) *Oxygen storage.* (i) Oxygen cylinders shall not be stored near highly combustible material, especially oil and grease; or near reserve stocks of carbide and acetylene or other fuel-gas cylinders, or near any other substance likely to cause or accelerate fire; or in an acetylene generator compartment.

(ii) Oxygen cylinders stored in outside generator houses shall be separated from the generator or carbide storage rooms by a noncombustible partition having a fire-resistance rating of at least 1 hour. This partition shall be without openings and shall be gastight.

(iii) Oxygen cylinders in storage shall be separated from fuel-gas cylinders or combustible materials (especially oil or grease), a minimum distance of 20 feet (6.1 m) or by a noncombustible barrier at least 5 feet (1.5 m) high having a fire-resistance rating of at least one-half hour.

(iv) Where a liquid oxygen system is to be used to supply gaseous oxygen for welding or cutting and the system has a storage capacity of more than 13,000 cubic feet (364 m^3) of oxygen (measured at 14.7 psia (101 kPa) and 70 °F (21.1 °C)), connected in service or ready for service, or more than 25,000 cubic feet (700 m^3) of oxygen (measured at 14.7 psia (101 kPa) and 70 °F (21.1 °C)), including unconnected reserves on hand at the site, it shall comply with the provisions of the Standard for Bulk Oxygen Systems at Consumer Sites, NFPA No. 566—1965.

(5) *Operating procedures.* (i) Cylinders, cylinder valves, couplings, regulators, hose, and apparatus shall be kept free from oily or greasy substances. Oxygen cylinders or apparatus shall not be handled with oily hands or gloves. A jet of oxygen must never be permitted to strike an oily surface, greasy clothes, or enter a fuel oil or other storage tank.

(ii) (A) When transporting cylinders by a crane or derrick, a cradle, boat, or suitable platform shall be used. Slings or electric magnets shall not be used for this purpose. Valve-protection caps, where cylinder is designed to accept a cap, shall always be in place.

(B) Cylinders shall not be dropped or struck or permitted to strike each other violently.

(C) Valve-protection caps shall not be used for lifting cylinders from one vertical position to another. Bars shall not be used under valves or valve-protection caps to pry cylinders loose when frozen to the ground or otherwise

fixed; the use of warm (not boiling) water is recommended. Valve-protection caps are designed to protect cylinder valves from damage.

(D) Unless cylinders are secured on a special truck, regulators shall be removed and valve-protection caps, when provided for, shall be put in place before cylinders are moved.

(E) Cylinders not having fixed hand wheels shall have keys, handles, or nonadjustable wrenches on valve stems while these cylinders are in service. In multiple cylinder installations only one key or handle is required for each manifold.

(F) Cylinder valves shall be closed before moving cylinders.

(G) Cylinder valves shall be closed when work is finished.

(H) Valves of empty cylinders shall be closed.

(I) Cylinders shall be kept far enough away from the actual welding or cutting operation so that sparks, hot slag, or flame will not reach them, or fire-resistant shields shall be provided.

(J) Cylinders shall not be placed where they might become part of an electric circuit. Contacts with third rails, trolley wires, etc., shall be avoided. Cylinders shall be kept away from radiators, piping systems, layout tables, etc., that may be used for grounding electric circuits such as for arc welding machines. Any practice such as the tapping of an electrode against a cylinder to strike an arc shall be prohibited.

(K) Cylinders shall never be used as rollers or supports, whether full or empty.

(L) The numbers and markings stamped into cylinders shall not be tampered with.

(M) No person, other than the gas supplier, shall attempt to mix gases in a cylinder. No one, except the owner of the cylinder or person authorized by him, shall refill a cylinder.

(N) No one shall tamper with safety devices in cylinders or valves.

(O) Cylinders shall not be dropped or otherwise roughly handled.

(P) Unless connected to a manifold, oxygen from a cylinder shall not be used without first attaching an oxygen regulator to the cylinder valve. Before connecting the regulator to the cylinder valve, the valve shall be opened slightly for an instant and then closed. Always stand to one side of the outlet when opening the cylinder valve.

(Q) A hammer or wrench shall not be used to open cylinder valves. If valves cannot be opened by hand, the supplier shall be notified.

(R)(*1*) Cylinder valves shall not be tampered with nor should any attempt be made to repair them. If trouble is experienced, the supplier should be sent a report promptly indicating the character of the trouble and the cylinder's serial number. Supplier's instructions as to its disposition shall be followed.

(*2*) Complete removal of the stem from a diaphragm-type cylinder valve shall be avoided.

(iii)(A) Fuel-gas cylinders shall be placed with valve end up whenever they are in use. Liquefied gases shall be stored and shipped with the valve end up.

(B) Cylinders shall be handled carefully. Rough handling, knocks, or falls are liable to damage the cylinder, valve or safety devices and cause leakage.

(C) Before connecting a regulator to a cylinder valve, the valve shall be opened slightly and closed immediately. The valve shall be opened while standing to one side of the outlet; never in front of it. Never crack a fuel-gas cylinder valve near other welding work or near sparks, flame, or other possible sources of ignition.

(D) Before a regulator is removed from a cylinder valve, the cylinder valve shall be closed and the gas released from the regulator.

(E) Nothing shall be placed on top of an acetylene cylinder when in use which may damage the safety device or interfere with the quick closing of the valve.

(F) If cylinders are found to have leaky valves or fittings which cannot be stopped by closing of the valve, the cylinders shall be taken outdoors away from sources of ignition and slowly emptied.

(G) A warning should be placed near cylinders having leaking fuse plugs or other leaking safety devices not to approach them with a lighted cigarette or other source of ignition. Such cylinders should be plainly tagged; the supplier should be promptly notified and his instructions followed as to their return.

(H) Safety devices shall not be tampered with.

(I) Fuel-gas shall never be used from cylinders through torches or other devices equipped with shutoff valves without reducing the pressure through a suitable regulator attached to the cylinder valve or manifold.

(J) The cylinder valve shall always be opened slowly.

(K) An acetylene cylinder valve shall not be opened more than one and one-half turns of the spindle, and preferably no more than three-fourths of a turn.

(L) Where a special wrench is required it shall be left in position on the stem of the valve while the cylinder is in use so that the fuel-gas flow can be quickly turned off in case of emergency. In the case of manifolded or coupled cylinders at least one such wrench shall always be available for immediate use.

(c) *Manifolding of cylinders*—(1) *Fuel-gas manifolds.* (i) Manifolds shall be approved either separately for each component part or as an assembled unit.

(ii) Except as provided in paragraph (c)(1)(iii) of this section fuel-gas cylinders connected to one manifold inside a building shall be limited to a total capacity not exceeding 300 pounds (135.9 kg) of liquefied petroleum gas or 3,000 cubic feet (84 m^3) of other fuel-gas. More than one such manifold with connected cylinders may be located in the same room provided the manifolds are at least 50 feet (15 m) apart or separated by a noncombustible barrier at least 5 feet (1.5 m) high having a fire-resistance rating of at least one-half hour.

(iii) Fuel-gas cylinders connected to one manifold having an aggregate capacity exceeding 300 pounds (135.9 kg) of liquefied petroleum gas or 3,000 cubic feet (84 m^3) of other fuel-gas shall be located outdoors, or in a separate building or room constructed in accordance with paragraphs (f)(6)(i)(H) and (f)(6)(i)(I) of this section.

(iv) Separate manifold buildings or rooms may also be used for the storage of drums of calcium carbide and cylinders containing fuel gases as provided in paragraph (b)(3) of this section. Such buildings or rooms shall have no open flames for heating or lighting and shall be well-ventilated.

(v) High-pressure fuel-gas manifolds shall be provided with approved pressure regulating devices.

(2) *High-pressure oxygen manifolds (for use with cylinders having a Department of Transportation service pressure above 200 psig (1.36 MPa)).* (i) Manifolds shall be approved either separately for each component part or as an assembled unit.

(ii) Oxygen manifolds shall not be located in an acetylene generator room. Oxygen manifolds shall be separated from fuel-gas cylinders or combustible materials (especially oil or grease), a minimum distance of 20 feet (6.1 m) or by a noncombustible barrier at least 5 feet (1.5 m) high having a fire-resistance rating of at least one-half hour.

(iii) Except as provided in paragraph (c)(2)(iv) of this section, oxygen cylinders connected to one manifold shall be limited to a total gas capacity of 6,000 cubic feet (168 m^3). More than one such manifold with connected cylinders may be located in the same room

provided the manifolds are at least 50 feet (15 m) apart or separated by a noncombustible barrier at least 5 feet (1.5 m) high having a fire-resistance rating of at least one-half hour.

(iv) An oxygen manifold, to which cylinders having an aggregate capacity of more than 6,000 cubic feet (168 m ^{3}) of oxygen are connected, should be located outdoors or in a separate noncombustible building. Such a manifold, if located inside a building having other occupancy, shall be located in a separate room of noncombustible construction having a fire-resistance rating of at least one-half hour or in an area with no combustible material within 20 feet (6.1 m) of the manifold.

(v) An oxygen manifold or oxygen bulk supply system which has storage capacity of more than 13,000 cubic feet (364 m ^{3}) of oxygen (measured at 14.7 psia (101 kPa) and 70 °F (21.1 °C)), connected in service or ready for service, or more than 25,000 cubic feet (700 m ^{3}) of oxygen (measured at 14.7 psia (101 kPa) and 70 °F (21.1 °C)), including unconnected reserves on hand at the site, shall comply with the provisions of the Standard for Bulk Oxygen Systems at Consumer Sites, NFPA No. 566–1965.

(vi) High-pressure oxygen manifolds shall be provided with approved pressure-regulating devices.

(3) *Low-pressure oxygen manifolds (for use with cylinders having a Department of Transportation service pressure not exceeding 200 psig (1.36 MPa)).* (i) Manifolds shall be of substantial construction suitable for use with oxygen at a pressure of 250 psig (1.7 MPa). They shall have a minimum bursting pressure of 1,000 psig (6.8 MPa) and shall be protected by a safety relief device which will relieve at a maximum pressure of 500 psig (3.4 MPa). DOT–4L200 cylinders have safety devices which relieve at a maximum pressure of 250 psig (1.7 MPa) (or 235 psig (1.6 MPa) if vacuum insulation is used).

(ii) Hose and hose connections subject to cylinder pressure shall comply with paragraph (e)(5) of this section. Hose shall have a minimum bursting pressure of 1,000 psig (6.8 MPa).

(iii) The assembled manifold including leads shall be tested and proven gas-tight at a pressure of 300 psig (2.04 MPa). The fluid used for testing oxygen manifolds shall be oil-free and not combustible.

(iv) The location of manifolds shall comply with paragraphs (c)(2)(ii), (c)(2)(iii), (c)(2)(iv), and (c)(2)(v) of this section.

(v) The following sign shall be conspicuously posted at each manifold:

Low-Pressure Manifold
Do Not Connect High-Pressure Cylinders
Maximum Pressure—250 psig (1.7 MPa)

(4) *Portable outlet headers.* (i) Portable outlet headers shall not be used indoors except for temporary service where the conditions preclude a direct supply from outlets located on the service piping system.

(ii) Each outlet on the service piping from which oxygen or fuel-gas is withdrawn to supply a portable outlet header shall be equipped with a readily accessible shutoff valve.

(iii) Hose and hose connections used for connecting the portable outlet header to the service piping shall comply with paragraph (e)(5) of this section.

(iv) Master shutoff valves for both oxygen and fuel-gas shall be provided at the entry end of the portable outlet header.

(v) Portable outlet headers for fuel-gas service shall be provided with an approved hydraulic back-pressure valve installed at the inlet and preceding the service outlets, unless an approved pressure-reducing regulator, an approved back-flow check valve, or an approved hydraulic back-pressure valve is installed at each outlet. Outlets provided on headers for oxygen service may be fitted for use with pressure-reducing regulators or for direct hose connection.

(vi) Each service outlet on portable outlet headers shall be provided with a valve assembly that includes a detachable outlet seal cap, chained or otherwise attached to the body of the valve.

(vii) Materials and fabrication procedures for portable outlet headers shall comply with paragraphs (d)(1),(d)(2), and (d)(5) of this section.

(viii) Portable outlet headers shall be provided with frames which will support the equipment securely in the correct operating position and protect them from damage during handling and operation.

(5) *Manifold operation procedures.* (i) Cylinder manifolds shall be installed under the supervision of someone familiar with the proper practices with reference to their construction and use.

(ii) All manifolds and parts used in methods of manifolding shall be used only for the gas or gases for which they are approved.

(iii) When acetylene cylinders are coupled, approved flash arresters shall be installed between each cylinder and the coupler block. For outdoor use only, and when the number of cylinders coupled does not exceed three, one flash arrester installed between the coupler block and regulator is acceptable.

(iv) The aggregate capacity of fuel-gas cylinders connected to a portable manifold inside a building shall not exceed 3,000 cubic feet (84 m ^{3}) of gas.

(v) Acetylene and liquefied fuel-gas cylinders shall be manifolded in a vertical position.

(vi) The pressure in the gas cylinders connected to and discharged simultaneously through a common manifold shall be approximately equal.

(d) *Service piping systems*—(1) *Materials and design.* (i)(A) Piping and fittings shall comply with section 2, Industrial Gas and Air Piping Systems, of the American National Standard Code for Pressure Piping ANSI B31.1, 1967, insofar as it does not conflict with paragraphs (d)(1)(i)(A)(*1*) and (d)(1)(i)(A)(*2*) of this section:

(*1*) Pipe shall be at least Schedule 40 and fittings shall be at least standard weight in sizes up to and including 6-inch nominal.

(*2*) Copper tubing shall be Types K or L in accordance with the Standard Specification for Seamless Copper Water Tube, ASTM B88–66a.

(B) Piping shall be steel, wrought iron, brass or copper pipe, or seamless copper, brass or stainless steel tubing, except as provided in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section.

(ii) (A) Oxygen piping and fittings at pressures in excess of 700 psi (4.8 MPa), shall be stainless steel or copper alloys.

(B) Hose connections and hose complying with paragraph (e)(5) of this section may be used to connect the outlet of a manifold pressure regulator to piping providing the working pressure of the piping is 250 psi (1.7 MPa) or less and the length of the hose does not exceed 5 feet (1.5 m). Hose shall have a minimum bursting pressure of 1,000 psig (6.8 MPa).

(C) When oxygen is supplied to a service piping system from a low-pressure oxygen manifold without an intervening pressure regulating device, the piping system shall have a minimum design pressure of 250 psig (1.7 MPa). A pressure regulating device shall be used at each station outlet when the connected equipment is for use at pressures less than 250 psig (1.7 MPa).

(iii) (A) Piping for acetylene or acetylenic compounds shall be steel or wrought iron.

(B) Unalloyed copper shall not be used for acetylene or acetylenic compounds except in listed equipment.

(2) *Piping joints.* (i) Joints in steel or wrought iron piping shall be welded, threaded or flanged. Fittings, such as ells, tees, couplings, and unions, may be rolled, forged or cast steel, malleable

iron or nodular iron. Gray or white cast iron fittings are prohibited.

(ii) Joints in brass or copper pipe shall be welded, brazed, threaded, or flanged. If of the socket type, they shall be brazed with silver-brazing alloy or similar high melting point (not less than 800°F (427°C)) filler metal.

(iii) Joints in seamless copper, brass, or stainless steel tubing shall be approved gas tubing fittings or the joints shall be brazed. If of the socket type, they shall be brazed with silver-brazing alloy or similar high melting point (not less than 800°F (427°C)) filler metal.

(3) *Installation.* (i) Distribution lines shall be installed and maintained in a safe operating condition.

(ii) All piping shall be run as directly as practicable, protected against physical damage, proper allowance being made for expansion and contraction, jarring and vibration. Pipe laid underground in earth shall be located below the frost line and protected against corrosion. After assembly, piping shall be thoroughly blown out with air, nitrogen, or carbon dioxide to remove foreign materials. For oxygen piping, only oil-free air, oil-free nitrogen, or oil-free carbon dioxide shall be used.

(iii) Only piping which has been welded or brazed shall be installed in tunnels, trenches or ducts. Shutoff valves shall be located outside such conduits. Oxygen piping may be placed in the same tunnel, trench or duct with fuel-gas pipelines, provided there is good natural or forced ventilation.

(iv) Low points in piping carrying moist gas shall be drained into drip pots constructed so as to permit pumping or draining out the condensate at necessary intervals. Drain valves shall be installed for this purpose having outlets normally closed with screw caps or plugs. No open end valves or petcocks shall be used, except that in drips located out of doors, underground, and not readily accessible, valves may be used at such points if they are equipped with means to secure them in the closed position. Pipes leading to the surface of the ground shall be cased or jacketed where necessary to prevent loosening or breaking.

(v) Gas cocks or valves shall be provided for all buildings at points where they will be readily accessible for shutting off the gas supply to these buildings in any emergency. There shall also be provided a shutoff valve in the discharge line from the generator, gas holder, manifold or other source of supply.

(vi) Shutoff valves shall not be installed in safety relief lines in such a manner that the safety relief device can be rendered ineffective.

(vii) Fittings and lengths of pipe shall be examined internally before assembly and, if necessary freed from scale or dirt. Oxygen piping and fittings shall be washed out with a suitable solution which will effectively remove grease and dirt but will not react with oxygen. Hot water solutions of caustic soda or trisodium phosphate are effective cleaning agents for this purpose.

(viii) Piping shall be thoroughly blown out after assembly to remove foreign materials. For oxygen piping, oil-free air, oil-free nitrogen, or oil-free carbon dioxide shall be used. For other piping, air or inert gas may be used.

(ix) When flammable gas lines or other parts of equipment are being purged of air or gas, open lights or other sources of ignition shall not be permitted near uncapped openings.

(x) No welding or cutting shall be performed on an acetylene or oxygen pipeline, including the attachment of hangers or supports, until the line has been purged. Only oil-free air, oil-free nitrogen, or oil-free carbon dioxide shall be used to purge oxygen lines.

(4) *Painting and signs.* (i) Underground pipe and tubing and outdoor ferrous pipe and tubing shall be covered or painted with a suitable material for protection against corrosion.

(ii) Aboveground piping systems shall be marked in accordance with the American National Standard Scheme for the Identification of Piping Systems, ANSI A13.1—1956.

(iii) Station outlets shall be marked to indicate the name of the gas.

(5) *Testing.* (i) Piping systems shall be tested and proved gastight at 1½ times the maximum operating pressure, and shall be thoroughly purged of air before being placed in service. The material used for testing oxygen lines shall be oil free and noncombustible. Flames shall not be used to detect leaks.

(ii) When flammable gas lines or other parts of equipment are being purged of air or gas, sources of ignition shall not be permitted near uncapped openings.

(e) *Protective equipment, hose, and regulators*—(1) *General.* Equipment shall be installed and used only in the service for which it is approved and as recommended by the manufacturer.

(2) *Pressure relief devices.* Service piping systems shall be protected by pressure relief devices set to function at not more than the design pressure of the systems and discharging upwards to a safe location.

(3) *Piping protective equipment.* (i) The fuel-gas and oxygen piping systems, including portable outlet headers shall incorporate the protective equipment shown in Figures Q–1, Q–2, and Q–3. When only a portion of a fuel-gas system is to be used with oxygen, only that portion need comply with this paragraph (e)(3)(i).

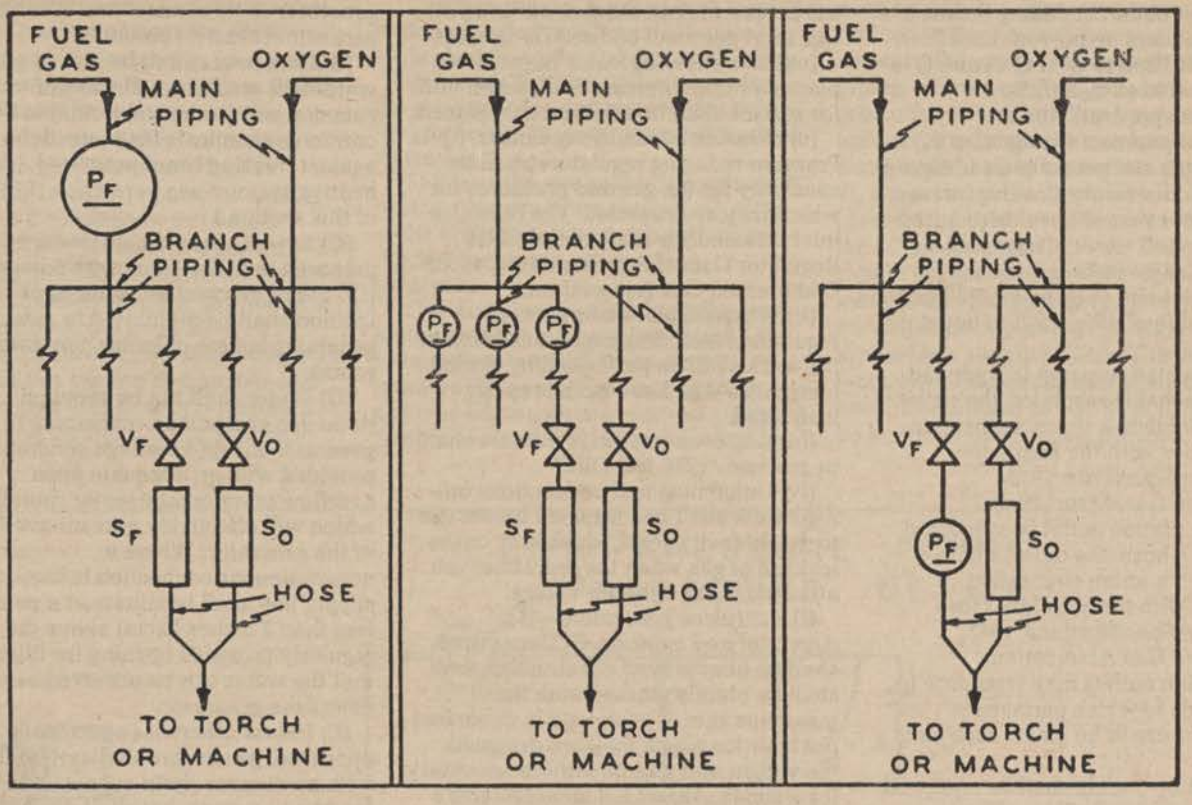

Fig. Q-1 Fig. Q-2 Fig. Q-3

LEGEND

P_F--Protective equipment in fuel gas piping
V_F--Fuel gas station outlet valve
V_O--Oxygen station outlet valve
S_F--Backflow prevention device(s) at fuel gas station outlet
S_O--Backflow prevention device(s) at oxygen station outlet

(ii) Approved protective equipment (designated P_F in Figures Q–1, Q–2, and Q–3) shall be installed in fuel-gas piping to prevent:

(A) Backflow of oxygen into the fuel-gas supply system;

(B) Passage of a flash back into the fuel-gas supply system; and

(C) Excessive back pressure of oxygen in the fuel-gas supply system. The three functions of the protective equipment may be combined in one device or may be provided by separate devices.

(*1*) The protective equipment shall be located in the main supply line, as in Figure Q–1 or at the head of each branch line, as in Figure Q–2 or at each location where fuel-gas is withdrawn, as in Figure Q–3. Where branch lines are of 2-inch pipe size or larger or of substantial length, protective equipment (designated as P_F) shall be located as shown in either Q–2 and Q–3.

(*2*) Backflow protection shall be provided by an approved device that will prevent oxygen from flowing into the fuel-gas system or fuel from flowing into the oxygen system (see S_F, Figures Q–1 and Q–2).

(*3*) Flash-back protection shall be provided by an approved device that will prevent flame from passing into the fuel-gas system.

(*4*) Back-pressure protection shall be provided by an approved pressure-relief device set at a pressure not greater than the pressure rating of the backflow or the flashback protection device, whichever is lower. The pressure-relief device shall be located on the downstream side of the backflow and flashback protection devices. The vent from the pressure-relief device shall be at least as large as the relief device inlet and shall be installed without low points that may collect moisture. If low points are unavoidable, drip pots with drains closed with screw plugs or caps shall be installed at the low points. The vent terminus shall not endanger personnel or property through gas discharge; shall be located away from ignition sources; and shall terminate in a hood or bend.

(iii) If pipeline protective equipment incorporates a liquid, the liquid level shall be maintained, and a suitable antifreeze may be used to prevent freezing.

(iv) Fuel gas for use with equipment not requiring oxygen shall be withdrawn upstream of the piping protective devices.

(4) *Station outlet protective equipment.* (i) A check valve, pressure regulator, hydraulic seal, or combination of these devices shall be provided at

each station outlet, including those on portable headers, to prevent backflow, as shown in Figures Q–1, Q–2, and Q–3 and designated as S_P and S_O.

(ii) When approved pipeline protective equipment (designated P_P) is located at the station outlet as in Figure Q–3, no additional check valve, pressure regulator, or hydraulic seal is required.

(iii) A shutoff valve (designated V_P and V_O) shall be installed at each station outlet and shall be located on the upstream side of other station outlet equipment.

(iv) If the station outlet is equipped with a detachable regulator, the outlet shall terminate in a union connection that complies with the Regulator Connection Standards, 1958, Compressed Gas Association.

(v) If the station outlet is connected directly to a hose, the outlet shall terminate in a union connection complying with the Standard Hose Connection Specifications, 1957, Compressed Gas Association.

(vi) Station outlets may terminate in pipe threads to which permanent connections are to be made, such as to a machine.

(vii) Station outlets shall be equipped with a detachable outlet seal cap secured in place. This cap shall be used to seal the outlet except when a hose, a regulator, or piping is attached.

(viii) Where station outlets are equipped with approved backflow and flashback protective devices, as many as four torches may be supplied from one station outlet through rigid piping, provided each outlet from such piping is equipped with a shutoff valve and provided the fuel-gas capacity of any one torch does not exceed 15 cubic feet (0.42 m^3) per hour. This paragraph (e)(4)(viii) does not apply to machines.

(5) *Hose and hose connections.* (i) Hose for oxy-fuel gas service shall comply with the Specification for Rubber Welding Hose, 1958, Compressed Gas Association and Rubber Manufacturers Association.

(ii) When parallel lengths of oxygen and acetylene hose are taped together for convenience and to prevent tangling, not more than 4 inches (10.2 cm) out of 12 inches (30.5 cm) shall be covered by tape.

(iii) Hose connections shall comply with the Standard Hose Connection Specifications, 1957, Compressed Gas Association.

(iv) Hose connections shall be clamped or otherwise securely fastened in a manner that will withstand, without leakage, twice the pressure to which they are normally subjected in service, but in no case less than a pressure of 300 psi (2.04 MPa). Oil-free air or an oil-free inert gas shall be used for the test.

(v) Hose showing leaks, burns, worn places, or other defects rendering it unfit for service shall be repaired or replaced.

(6) *Pressure-reducing regulators.* (i) Pressure-reducing regulators shall be used only for the gas and pressures for which they are intended. The regulator inlet connections shall comply with Regulator Connection Standards, 1958, Compressed Gas Association.

(ii) When regulators or parts of regulators, including gages, need repair, the work shall be performed by skilled mechanics who have been properly instructed.

(iii) Gages on oxygen regulators shall be marked "USE NO OIL."

(iv) Union nuts and connections on regulators shall be inspected before use to detect faulty seats which may cause leakage of gas when the regulators are attached to the cylinder valves.

(f) *Acetylene generators*—(1) *Approval and marking.* (i) Generators shall be of approved construction and shall be plainly marked with the maximum rate of acetylene in cubic feet per hour for which they are designed; the weight and size of carbide necessary for a single charge; the manufacturer's name and address; and the name or number of the type of generator.

(ii) Carbide shall be of the size marked on the generator nameplate.

(2) *Rating and pressure limitations.* (i) The total hourly output of a generator shall not exceed the rate for which it is approved and marked. Unless specifically approved for higher ratings, carbide-feed generators shall be rated at 1 cubic foot (0.028 m^3) per hour per pound of carbide required for a single complete charge.

(ii) Relief valves shall be regularly operated to insure proper functioning. Relief valves for generating chambers shall be set to open at a pressure not in excess of 15 psig (103 kPa gauge pressure). Relief valves for hydraulic back pressure valves shall be set to open at a pressure not in excess of 20 psig (137 kPa gauge pressure).

(iii) Nonautomatic generators shall not be used for generating acetylene at pressures exceeding l psig (7 kPa gauge pressure), and all water overflows shall be visible.

(3) *Location.* The space around the generator shall be ample for free, unobstructed operation and maintenance and shall permit ready adjustment and charging.

(4) *Stationary acetylene generators (automatic and nonautomatic).* (i)(A) The foundation shall be so arranged that the generator will be level and so that no excessive strain will be placed on the generator or its connections. Acetylene generators shall be grounded.

(B) Generators shall be placed where water will not freeze. The use of common salt (sodium chloride) or other corrosive chemicals for protection against freezing is not permitted. (For heating systems see paragraph (f)(6)(iii) of this section.)

(C) Except when generators are prepared in accordance with paragraph (f)(7)(v) of this section, sources of ignition shall be prohibited in outside generator houses or inside generator rooms.

(D) Water shall not be supplied through a continuous connection to the generator except when the generator is provided with an adequate open overflow or automatic water shutoff which will effectively prevent overfilling of the generator. Where a noncontinuous connection is used, the supply line shall terminate at a point not less than 2 inches (5 cm) above the regularly provided opening for filling so that the water can be observed as it enters the generator.

(E) Unless otherwise specifically approved, generators shall not be fitted with continuous drain connections leading to sewers, but shall discharge through an open connection into a suitably vented outdoor receptacle or residue pit which may have such connections. An open connection for the sludge drawoff is desirable to enable the generator operator to observe leakage of generating water from the drain valve or sludge cock.

(ii)(A) Each generator shall be provided with a vent pipe.

(B) The escape or relief pipe shall be rigidly installed without traps and so that any condensation will drain back to the generator.

(C) The escape or relief pipe shall be carried full size to a suitable point outside the building. It shall terminate in a hood or bend located at least 12 feet (3.7 m) above the ground, preferably above the roof, and as far away as practicable from windows or other openings into buildings and as far away as practicable from sources of ignition such as flues or chimneys and tracks used by locomotives. Generating chamber relief pipes shall not be interconnected but shall be separately led to the outside air. The hood or bend shall be so constructed that it will not be obstructed by rain, snow, ice, insects, or birds. The outlet shall be at least 3 feet (0.9 m) from combustible construction.

(iii)(A) Gas holders shall be constructed on the gasometer principle, the bell being suitably guided. The gas bell shall move freely without tendency

to bind and shall have a clearance of at least 2 inches (5 cm) from the shell.

(B) The gas holder may be located in the generator room, in a separate room or out of doors. In order to prevent collapse of the gas bell or infiltration of air due to a vacuum caused by the compressor or booster pump or cooling of the gas, a compressor or booster cutoff shall be provided at a point 12 inches (0.3 m) or more above the landing point of the bell. When the gas holder is located indoors, the room shall be ventilated in accordance with paragraph (f)(6)(ii) of this section and heated and lighted in accordance with paragraphs (f)(6)(iii) and (f)(6)(iv) of this section.

(C) When the gas holder is not located within a heated building, gas holder seals shall be protected against freezing.

(D) Means shall be provided to stop the generator-feeding mechanism before the gas holder reaches the upper limit of its travel.

(E) When the gas holder is connected to only one generator, the gas capacity of the holder shall be not less than one-third of the hourly rating of the generator.

(F) If acetylene is used from the gas holder without increase in pressure at some points but with increase in pressure by a compressor or booster pump at other points, approved piping protective devices shall be installed in each supply line. The low-pressure protective device shall be located between the gas holder and the shop piping, and the medium-pressure protective device shall be located between the compressor or booster pump and the shop piping (see Figure Q-4). Approved protective equipment (designated P_F) is used to prevent: Backflow of oxygen into the fuel-gas supply system; passage of a flashback into the fuel-gas supply system; and excessive back pressure of oxygen in the fuel-gas supply system. The three functions of the protective equipment may be combined in one device or may be provided by separate devices.

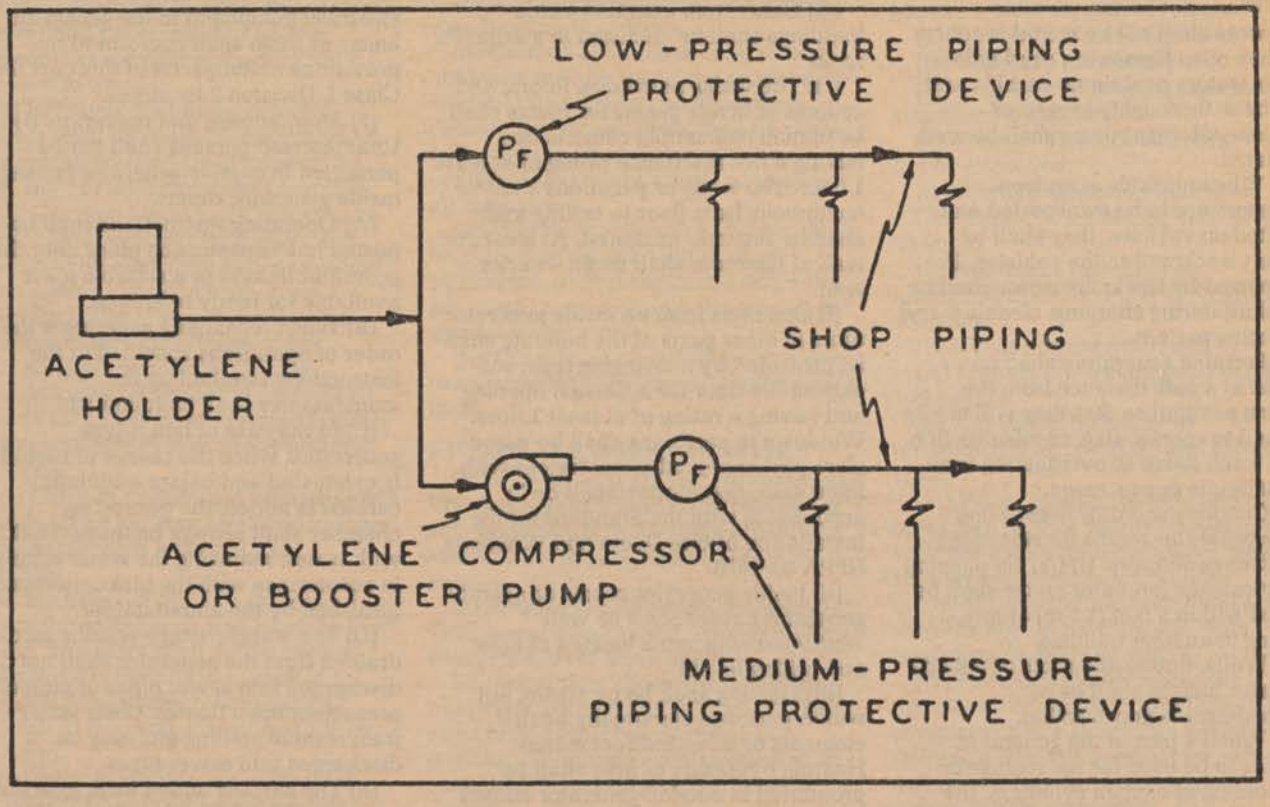

Figure Q-4

(iv) (A) The compressor or booster system shall be of an approved type.

(B) Wiring and electrical equipment in compressor or booster pump rooms or enclosures shall conform to the provisions of § 1910.324 of this part for Class I, Division 2 locations.

(C) Compressors and booster pump equipment shall be located in well-ventilated areas away from open flames, electrical or mechanical sparks, or other ignition sources.

(D) Compressor or booster pumps shall be provided with pressure relief valves which will relieve pressure exceeding 15 psig (103 kPa gauge pressure) to a safe outdoor location as provided in paragraph (f)(4)(ii) of this section, or by returning the gas to the inlet side or to the gas supply source.

(E) Compressor or booster pump discharge outlets shall be provided with approved protective equipment. (See paragraph (e) of this section.)

(5) *Portable acetylene generators.* (i) (A) All portable generators shall be of a type approved for portable use.

(B) Portable generators shall not be used within 10 feet (3 m) of combustible material other than the floor.

(C) Portable generators shall not be used in rooms of total volume less than 35 times the total gas-generating capacity per charge of all generators in the room. Generators shall not be used in rooms having a ceiling height of less than 10 feet (3 m). (To obtain the gas-generating capacity in cubic feet per charge, multiply the pounds of carbide per charge by 4.5.)

(D) Portable generators shall be protected against freezing. The use of salt or other corrosive chemical to prevent freezing is prohibited.

(ii) (A) Portable generators shall be cleaned and recharged and the air mixture blown off outside buildings.

(B) When charged with carbide, portable generators shall not be moved by crane or derrick.

(C) When not in use, portable generators shall not be stored in rooms in which open flames are used unless the generators contain no carbide and have been thoroughly purged of acetylene. Storage rooms shall be well ventilated.

(D) When portable acetylene generators are to be transported and operated on vehicles, they shall be securely anchored to the vehicles. If transported by truck, the motor shall be turned off during charging, cleaning, and generating periods.

(E) Portable generators shall be located at a safe distance from the welding position so that they will not be exposed to sparks, slag, or misdirection of the torch flame or overheating from hot materials or processes.

(6) *Outside generator houses and inside generator rooms for stationary acetylene generators.* (i) (A) No opening in any outside generator house shall be located within 5 feet (1.5 m) of any opening in another building.

(B) Walls, floors, and roofs of outside generator houses shall be of noncombustible construction.

(C) When a part of the generator house is to be used for the storage or manifolding of oxygen cylinders, the space to be so occupied shall be separated from the generator or carbide storage section by partition walls continuous from floor to roof or ceiling, of the type of construction stated in paragraph (f)(6)(i)(H) of this section. Such separation walls shall be without openings and shall be joined to the floor, other walls and ceiling or roof in a manner to effect a permanent gas-tight joint.

(D) Exit doors shall be located so as to be readily accessible in case of emergency.

(E) Explosion venting for outside generator houses and inside generator rooms shall be provided in exterior walls or roofs. The venting areas shall be equal to not less than 1 square foot (0.09 m^2) per 50 cubic feet (1.4 m^3) of room volume and may consist of any one or any combination of the following: Walls of light, noncombustible material preferably single-thickness, single-strength glass; lightly fastened hatch covers; lightly fastened swinging doors in exterior walls opening outward; lightly fastened walls or roof designed to relieve at a maximum pressure of 25 pounds per square foot (0.001 MPa).

(F) The installation of acetylene generators within buildings shall be restricted to buildings not exceeding one story in height; *provided, however,* that this will not be construed as prohibiting such installations on the roof or top floor of a building exceeding such height.

(G) Generators installed inside buildings shall be enclosed in a separate room.

(H) The walls, partitions, floors, and ceilings of inside generator rooms shall be of noncombustible construction having a fire-resistance rating of at least 1 hour. The walls or partitions shall be continuous from floor to ceiling and shall be securely anchored. At least one wall of the room shall be an exterior wall.

(I) Openings from an inside generator room to other parts of the building shall be protected by a swinging type, self-closing fire door for a Class B opening and having a rating of at least 1 hour. Windows in partitions shall be wired glass and approved metal frames with fixed sash. Installation shall be in accordance with the Standard for the Installation of Fire Doors and Windows, NFPA 80–1970.

(ii) Inside generator rooms or outside generator houses shall be well ventilated with vents located at floor and ceiling levels.

(iii) Heating shall be by steam, hot water, enclosed electrically heated elements or other indirect means. Heating by flames or fires shall be prohibited in outside generator houses or inside generator rooms, or in any enclosure communicating with them.

(iv)(A) Generator houses or rooms shall have natural light during daylight hours. Where artificial lighting is necessary it shall be restricted to electric lamps installed in a fixed position. Unless specifically approved for use in atmospheres containing acetylene, such lamps shall be provided with enclosures of glass or other noncombustible material so designed and constructed as to prevent gas vapors from reaching the lamp or socket and to resist breakage. Rigid conduit with threaded connections shall be used.

(B) Lamps installed outside of wired-glass panels set in gas-tight frames in the exterior walls or roof of the generator house or room are acceptable.

(v) Electric switches, telephones, and all other electrical apparatus which may cause a spark, unless specifically approved for use inside acetylene generator rooms, shall be located outside the generator house or in a room or space separated from the generator room by a gas-tight partition, except that where the generator system is designed so that no carbide fill opening or other part of the generator is open to the generator house or room during the operation of the generator, and so that residue is carried in closed piping from the residue discharge valve to a point outside the generator house or room, electrical equipment in the generator house or room shall conform to the provisions of Subpart S of this part for Class I, Division 2 locations.

(7) *Maintenance and operation.* (i) Unauthorized persons shall not be permitted in outside generator houses or inside generator rooms.

(A) Operating instructions shall be posted in a conspicuous place near the generator or kept in a suitable place available for ready reference.

(B) When recharging generators the order of operations specified in the instructions supplied by the manufacturer shall be followed.

(C) In the case of batch-type generators, when the charge of carbide is exhausted and before additional carbide is added, the generating chamber shall always be flushed out with water, renewing the water supply in accordance with the instruction card furnished by the manufacturer.

(D) The water-carbide residue mixture drained from the generator shall not be discharged into sewer pipes or stored in areas near open flames. Clear water from residue settling pits may be discharged into sewer pipes.

(ii) The carbide added each time the generator is recharged shall be sufficient to refill the space provided for carbide without ramming the charge. Steel or other ferrous tools shall not be used in distributing the charge.

(iii) Generator water chambers shall be kept filled to proper level at all times except while draining during the recharging operation.

(iv) Whenever repairs are to be made or the generator is to be charged or carbide is to be removed, the water chamber shall be filled to the proper level.

(v) Previous to making repairs involving welding, soldering, or other hot work or other operations which

produce a source of ignition, the carbide charge and feed mechanism shall be completely removed. All acetylene shall be expelled by completely flooding the generator shell with water and the generator shall be disconnected from the piping system. The generator shall be kept filled with water, if possible, or positioned to hold as much water as possible.

(vi) Hot repairs shall not be made in a room where there are other generators unless all the generators and piping have been purged of acetylene.

(g) *Calcium carbide storage*—(1) *Packaging.* (i) Calcium carbide shall be contained in metal packages of sufficient strength to prevent rupture. The packages shall be provided with a screw top or equivalent. These packages shall be constructed water- and air-tight. Solder shall not be used in such a manner that the package would fail if exposed to fire.

(ii) Packages containing calcium carbide shall be conspicuously marked "Calcium Carbide—Dangerous If Not Kept Dry" or with equivalent warning.

(iii) Caution: Metal tools, even the so-called spark resistant type may cause ignition of an acetylene and air mixture when opening carbide containers.

(iv) Sprinkler systems shall not be installed in carbide storage rooms.

(2) *Storage indoors.* (i) Calcium carbide in quantities not to exceed 600 pounds (272.2 kg) may be stored indoors in dry, waterproof, and well-ventilated locations.

(A) Calcium carbide not exceeding 600 pounds (272.2 kg) may be stored indoors in the same room with fuel-gas cylinders.

(B) Packages of calcium carbide, except for one of each size, shall be kept sealed. The seals shall not be broken when there is carbide in excess of 1 pound (0.5 kg) in any other unsealed package of the same size of carbide in the room.

(ii) Calcium carbide exceeding 600 pounds (272.2 kg) but not exceeding 5,000 pounds (2,268 kg) shall be stored:

(A) In accordance with paragraph (g)(2)(iii) of this section;

(B) In an inside generator room or outside generator house; or

(C) In a separate room in a one-story building which may contain other occupancies, but without cellar or basement beneath the carbide storage section. Such rooms shall be constructed in accordance with paragraphs (f)(6)(i)(H) and (f)(6)(i)(I) of this section and ventilated in accordance with paragraph (f)(6)(ii) of this section. These rooms shall be used for no other purpose.

(iii) Calcium carbide in excess of 5,000 pounds (2,268 kg) shall be stored in one-story buildings without cellar or basement and used for no other purpose, or in outside generator houses. If the storage building is of noncombustible construction, it may adjoin other one-story buildings if separated therefrom by unpierced firewalls; if it is detached less than 10 feet (3 m) from such building or buildings, there shall be no opening in any of the mutually exposing sides of such buildings within 10 feet (3 m). If the storage building is of combustible construction, it shall be at least 20 feet (6.1 m) from any other one- or two-story building, and at least 30 feet (9.1 m) from any other building exceeding two stories.

(3) *Storage outdoors.* (i) Calcium carbide in unopened metal containers may be stored outdoors.

(ii) Carbide containers to be stored outdoors shall be examined to make sure that they are in good condition. Periodic reexaminations shall be made for rusting or other damage to a container that might affect its water or air tightness.

(iii) The bottom tier of each row shall be placed on wooden planking or equivalent, so that the containers will not come in contact with the ground or ground water.

(iv) Containers of carbide which have been in storage the longest shall be used first.

§ 1910.254 Arc welding and cutting.

(a) *General*—(1) *Equipment selection.* Welding equipment shall be chosen for safe application to the work to be done as specified in paragraph (b) of this section.

(2) *Installation.* Welding equipment shall be installed safely as specified by paragraph (c) of this section.

(3) *Instruction.* Workmen designated to operate arc welding equipment shall have been properly instructed and qualified to operate such equipment as specified in paragraph (d) of this section.

(b) *Application of arc welding equipment*—(1) *General.* Assurance of consideration of safety in design is obtainable by choosing apparatus complying with the Requirements for Electric Arc-Welding Apparatus, NEMA EW-1-1962, National Electrical Manufacturers Association or the Safety Standard for Transformer-Type Arc-Welding Machines, ANSI C33.2—1956, Underwriters' Laboratories.

(2) *Environmental conditions.* (i) Standard machines for arc welding service shall be designed and constructed to carry their rated load with rated temperature rises where the temperature of the cooling air does not exceed 40 °C (104 °F) and where the altitude does not exceed 3,300 feet (1,005.8 m), and shall be suitable for operation in atmospheres containing gases, dust, and light rays produced by the welding arc.

(ii) Unusual service conditions may exist, and in such circumstances machines shall be especially designed to safely meet the requirements of the service. Chief among these conditions are:

(A) Exposure to unusually corrosive fumes.

(B) Exposure to steam or excessive humidity.

(C) Exposure to excessive oil vapor.

(D) Exposure to flammable gases.

(E) Exposure to abnormal vibration or shock.

(F) Exposure to excessive dust.

(G) Exposure to weather.

(H) Exposure to unusual seacoast or shipboard conditions.

(3) *Voltage.* The following limits shall not be exceeded:

(i) Alternating-current machines

(A) Manual arc welding and cutting—80 volts.

(B) Automatic (machine or mechanized) arc welding and cutting—100 volts.

(ii) Direct-current machines

(A) Manual arc welding and cutting—100 volts.

(B) Automatic (machine or mechanized) arc welding and cutting-100 volts.

(iii) When special welding and cutting processes require values of open circuit voltages higher than the above, means shall be provided to prevent the operator from making accidental contact with the high voltage by adequate insulation or other means.

(iv) For a.c. welding under wet conditions or warm surroundings where perspiration is a factor, the use of reliable automatic controls for reducing no load voltage is recommended to reduce the shock hazard.

(4) *Design.* (i) A controller integrally mounted in an electric motor driven welder shall have capacity for carrying rated motor current, shall be capable of making and interrupting stalled rotor current of the motor, and may serve as the running overcurrent device if provided with the number of overcurrent units as specified by Subpart S of this part.

(ii) On all types of arc welding machines, control apparatus shall be enclosed except for the operating wheels, levers, or handles.

(iii) Input power terminals, tap change devices and live metal parts connected

to input circuits shall be completely enclosed and accessible only by means of tools.

(iv) Terminals for welding leads should be protected from accidental electrical contact by personnel or by metal objects, i.e., vehicles, crane hooks, etc. Protection may be obtained by use of: Dead-front receptacles for plug connections; recessed openings with nonremovable hinged covers; heavy insulating sleeving or taping or other equivalent electrical and mechanical protection. If a welding lead terminal which is intended to be used exclusively for connection to the work is connected to the grounded enclosure, it must be done by a conductor at least two AWG sizes smaller than the grounding conductor and the terminal shall be marked to indicate that it is grounded.

(v) No connections for portable control devices such as push buttons to be carried by the operator shall be connected to an a.c. circuit of higher than 120 volts. Exposed metal parts of portable control devices operating on circuits above 50 volts shall be grounded by a grounding conductor in the control cable.

(vi) Auto transformers or a.c. reactors shall not be used to draw welding current directly from any a.c. power source having a voltage exceeding 80 volts.

(c) *Installation of arc welding equipment*—(1) *General.* Installation including power supply shall be in accordance with the requirements of Subpart S of this part.

(2) *Grounding.* (i) The frame or case of the welding machine (except engine-driven machines) shall be grounded under the conditions and according to the methods prescribed in Subpart S of this part.

(ii) Conduits containing electrical conductors shall not be used for completing a work-lead circuit. Pipelines shall not be used as a permanent part of a work-lead circuit, but may be used during construction, extension or repair providing current is not carried through threaded joints, flanged bolted joints, or caulked joints and that special precautions are used to avoid sparking at connection of the work-lead cable.

(iii) Chains, wire ropes, cranes, hoists, and elevators shall not be used to carry welding current.

(iv) Where a structure, conveyor, or fixture is regularly employed as a welding current return circuit, joints shall be bonded or provided with adequate current collecting devices.

(v) All ground connections shall be checked to determine that they are mechanically strong and electrically adequate for the required current.

(3) *Supply connections and conductors.* (i) A disconnecting switch or controller shall be provided at or near each welding machine which is not equipped with such a switch or controller mounted as an integral part of the machine. The switch shall be in accordance with subpart S of this part. Overcurrent protection shall be provided as specified in subpart S of this part. A disconnect switch with overload protection or equivalent disconnect and protection means, permitted by subpart S of this part, shall be provided for each outlet intended for connection to a portable welding machine.

(ii) For individual welding machines, the rated current-carrying capacity of the supply conductors shall be not less than the rated primary current of the welding machines.

(iii) For groups of welding machines, the rated current-carrying capacity of conductors may be less than the sum of the rated primary currents of the welding machines supplied. The conductor rating shall be determined in each case according to the machine loading based on the use to be made of each welding machine and the allowance permissible in the event that all the welding machines supplied by the conductors will not be in use at the same time.

(iv) In operations involving several welders on one structure, d.c. welding process requirements may require the use of both polarities; or supply circuit limitations for a.c. welding may require distribution of machines among the phases of the supply circuit. In such cases no load voltages between electrode holders will be 2 times normal in d.c. or 1, 1.41, 1.73, or 2 times normal on a.c. machines. Similar voltage differences will exist if both a.c. and d.c. welding are done on the same structure.

(A) All d.c. machines shall be connected with the same polarity.

(B) All a.c. machines shall be connected to the same phase of the supply circuit and with the same instantaneous polarity.

(d) *Operation and maintenance*—(1) *General.* Workmen assigned to operate or maintain arc welding equipment shall be acquainted with the requirements of this section and with § 1910.252 (a), (b) and (c) of this part; if doing gas-shielded arc welding, also Recommended Safe Practices for Gas-Shielded Arc Welding, A6.1–1966, American Welding Society.

(2) *Machine hook up.* Before starting operations all connections to the machine shall be checked to make certain they are properly made. The work lead shall be firmly attached to the work; magnetic work clamps shall be freed from adherent metal particles of spatter on contact surfaces. Coiled welding cable shall be spread out before use to avoid serious overheating and damage to insulation.

(3) *Grounding.* Grounding of the welding machine frame shall be checked. Special attention shall be given to safety ground connections of portable machines.

(4) *Leaks.* There shall be no leaks of cooling water, shielding gas or engine fuel.

(5) *Switches.* It shall be determined that proper switching equipment for shutting down the machine is provided.

(6) *Manufacturers' instructions.* Printed rules and instructions covering operation of equipment supplied by the manufacturers shall be strictly followed.

(7) *Electrode holders.* Electrode holders when not in use shall be so placed that they cannot make electrical contact with persons, conducting objects, fuel or compressed gas tanks.

(8) *Electric shock.* Cables with splices within 10 feet (3 m) of the holder shall not be used. The welder should not coil or loop welding electrode cable around parts of his body.

(9) *Maintenance.* (i) The operator should report any equipment defect or safety hazard to his supervisor and the use of the equipment shall be discontinued until its safety has been assured. Repairs shall be made only by qualified personnel.

(ii) Machines which have become wet shall be thoroughly dried and tested before being used.

(iii) Cables with damaged insulation or exposed bare conductors shall be replaced. Joining lengths of work and electrode cables shall be done by the use of connecting means specifically intended for the purpose. The connecting means shall have insulation adequate for the service conditions.

§ 1910.255 Resistance welding.

(a) *General*—(1) *Installation.* All equipment shall be installed by a qualified electrician in conformance with subpart S of this part. There shall be a safety-type disconnecting switch or a circuit breaker or circuit interrupter to open each power circuit to the machine, conveniently located at or near the machine, so that the power can be shut off when the machine or its controls are to be serviced.

(2) *Thermal protection.* Ignitron tubes used in resistance welding equipment shall be equipped with a thermal protection switch.

(3) *Personnel.* Workmen designated to operate resistance welding equipment shall have been properly instructed and

judged competent to operate such equipment.

(4) *Guarding.* Controls of all automatic or air and hydraulic clamps shall be arranged or guarded to prevent the operator from accidentally activating them.

(b) *Spot and seam welding machines (nonportable)*—(1) *Voltage.* All external weld initiating control circuits shall operate on low voltage, not over 120 volts, for the safety of the operators.

(2) *Capacitor welding.* Stored energy or capacitor discharge type of resistance welding equipment and control panels involving high voltage (over 550 volts) shall be suitably insulated and protected by complete enclosures, all doors of which shall be provided with suitable interlocks and contacts wired into the control circuit (similar to elevator interlocks). Such interlocks or contacts shall be so designed as to effectively interrupt power and short circuit all capacitors when the door or panel is open. A manually operated switch or suitable positive device shall be installed, in addition to the mechanical interlocks or contacts, as an added safety measure assuring absolute discharge of all capacitors.

(3) *Interlocks.* All doors and access panels of all resistance welding machines and control panels shall be kept locked and interlocked to prevent access, by unauthorized persons, to live portions of the equipment.

(4) *Guarding.* All press welding machine operations, where there is a possibility of the operator's fingers being under the point of operation, shall be effectively guarded by the use of a device such as an electronic eye safety circuit, two hand controls or protection similar to that prescribed for punch press operation, § 1910.217 of this part. All chains, gears, operating bus linkage, and belts shall be protected by adequate guards, in accordance with § 1910.219 of this part.

(5) *Shields.* The hazard of flying sparks shall be, wherever practical, eliminated by installing a shield guard of safety glass or suitable fire-resistant plastic at the point of operation. Additional shields or curtains shall be installed as necessary to protect passing persons from flying sparks. (See § 1910.252(b)(2)(i)(C) of this part.)

(6) *Foot switches.* All foot switches shall be guarded to prevent accidental operation of the machine.

(7) *Stop buttons.* Two or more safety emergency stop buttons shall be provided on all special multispot welding machines, including 2-post and 4-post weld presses.

(8) *Safety pins.* On large machines, four safety pins with plugs and receptacles (one in each corner) shall be provided so that when safety pins are removed and inserted in the ram or platen, the press becomes inoperative.

(9) *Grounding.* Where technically practical, the secondary of all welding transformers used in multispot, projection and seam welding machines shall be grounded. This may be done by permanently grounding one side of the welding secondary current circuit. Where not technically practical, a center tapped grounding reactor connected across the secondary or the use of a safety disconnect switch in conjunction with the welding control are acceptable alternates. Safety disconnect shall be arranged to open both sides of the line when welding current is not present.

(c) *Portable welding machines*—(1) *Counterbalance.* All portable welding guns shall have suitable counterbalanced devices for supporting the guns, including cables, unless the design of the gun or fixture makes counterbalancing impractical or unnecessary.

(2) *Safety chains.* All portable welding guns, transformers and related equipment that is suspended from overhead structures, eye beams, trolleys, etc., shall be equipped with safety chains or cables. Safety chains or cables shall be capable of supporting the total shock load in the event of failure of any component of the supporting system.

(3) *Clevis.* Each clevis shall be capable of supporting the total shock load of the suspended equipment in the event of trolley failure.

(4) *Switch guards.* All initiating switches, including retraction and dual schedule switches, located on the portable welding gun shall be equipped with suitable guards capable of preventing accidental initiation through contact with fixturing, operator's clothing, etc. Initiating switch voltage shall not exceed 24 volts.

(5) *Moving holder.* The movable holder, where it enters the gun frame, shall have sufficient clearance to prevent the shearing of fingers carelessly placed on the operating movable holder.

(6) *Grounding.* The secondary and case of all portable welding transformers shall be grounded. Secondary grounding may be by center tapped secondary or by a center tapped grounding reactor connected across the secondary.

(d) *Flash welding equipment*—(1) *Ventilation and flash guard.* Flash welding machines shall be equipped with a hood to control flying flash. In cases of high production, where materials may contain a film of oil and where toxic elements and metal fumes are given off, ventilation shall be provided in accordance with § 1910.252(c) of this part.

(2) *Fire curtains.* For the protection of the operators of nearby equipment, fire-resistant curtains or suitable shields shall be set up around the machine and in such a manner that the operators movements are not hampered.

(e) *Maintenance.* Periodic inspection shall be made by qualified maintenance personnel, and a certification record maintained. The certification record shall include the date of inspection, the signature of the person who performed the inspection and the serial number, or other identifier, for the equipment inspected. The operator shall be instructed to report any equipment defects to his supervisor and the use of the equipment shall be discontinued until safety repairs have been completed.

§ 1910.256 Sources of standards.

Sec.	Source
1910.251	ANSI Z49.1—1967, Safety in Welding and Cutting.
1910.252-.255	(a) NFPA—51-1969, Welding and Cutting Oxygen Fuel Gas System. (b) ANSI Z—49.1-1967, Safety in Welding and Cutting. (c) NFPA—51B-1962, Cutting and Welding Processes. (d) 41 CFR 50-204.7.

§ 1910.257 Standards organizations.

Specific standards of the following organizations have been referenced in this subpart. Copies of the referenced standards may be obtained from the issuing organizations. The names and addresses of the issuing organizations are as follows:

(a) American National Standards Institute (ANSI), 1430 Broadway, New York, NY 10018.

(b) National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

(c) Compressed Gas Association, Inc., 1235 Jefferson Davis Highway, Arlington, VA 22207.

(d) American Petroleum Institute, 1220 L Street NW., Washington, DC 20005.

(e) American Welding Society, 550 NW. LeJeune Road, P.O. Box 351040, Miami, FL 33135.

(f) Rubber Manufacturers Association, 1400 K Street NW., Washington, DC 20005.

[FR Doc. 90-7799 Filed 4-10-90; 8:45 am]

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federal register

Wednesday
April 11, 1990

Part III

Department of Education

School, College, and University Partnerships Program; Notice Inviting Applications for New Awards for Fiscal Year 1990

DEPARTMENT OF EDUCATION

[CFDA No. 84.204]

School, College, and University Partnerships Program; Notice Inviting Applications for New Awards for Fiscal Year 1990

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To encourage partnership between institutions of higher education and secondary schools serving low income students, and to support programs that improve the academic skills of public and private nonprofit secondary school students, increase their opportunity to continue a program of education after secondary school, and improve their prospects for employment after secondary school.

Deadline for Transmittal of Applications: May 25, 1990.

Deadline for Intergovernmental Review: July 24, 1990

Available Funds: $1,000,000.

Estimated Range of Awards: $250,000–$400,000 per year.

Note: The Department will not make grants for less than $250,000 per year.

Estimated Average Size of Awards: $250,000–$333,000.

Estimated Number of Awards: 3–4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and Part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).

Eligibility: To be eligible to apply for a grant under this program, an institution of higher education and a local educational agency must enter into a written partnershp agreement. The partnership may also include businessess, labor organizations, professional associations, community-based organizations, or other private or public agencies or associations. All partners must sign the agreement which shall include—

(1) A listing of all participants in the partnership;

(2) A description of the responsibilities of each participant in the partnership; and

(3) A listing of the resources to be contributed by each participant in the partnership.

In addition, the partnership must establish a governing body that includes one representative of each participant in the partnership.

The legal applicant may be one member of the partnership designated by the group to apply for the grant. However, the legal applicant must be a local educational agency, an institution of higher education, or, provided that the partnership has been established as a separate legal entity, the partnership.

Activities: Grant funds may be used by the partnership to support programs that—

(a) Use college students to tutor secondary school students and improve their basic academic skills;

(b) Are designed to improve the basic academic skills of secondary school students;

(c) Are designed to increase the understanding of specific subjects of secondary school students;

(d) Are designed to improve the opportunity to continue a program of education after graduation for secondary school students; and

(e) Are designed to increase the prospects for employment after graduation of secondary school students.

Funding Requirements: (a) The Secretary will reserve 65 percent of program funds for programs operating during the regular school year and 35 percent to carry out programs during the summer. An applicant may request funds to operate programs during the regular school year, the summer, or both. The budget must clearly separate the amount requested for the regular school year programs and the summer programs.

(b) The partnership must provide at least 30 percent of the cost of project in the first year, 40 percent in the second year and 50 percent in the third and any subsequent years. (Regulations governing the Federal matching requirements can be found in 34 CFR part 74, subpart G and 34 CFR 80.24.)

(c) A local educational agency receiving funds under this program shall use these funds so as to supplement and not supplant non-Federal funds, and, to the extent practical, increase the resources that would, in the absence of Federal funds received under this program, be made available from non-Federal sources for the education of students participating in a project under this program. A local educational agency receiving funds under this program shall not reduce its combined fiscal effort per student or its aggregate expenditure on education.

Priorities: In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary has established the following absolute priorities. Applications submitted under the School, College, and University Partnerships program for fiscal year 1990 must meet two or more of the following priorities in order to be considered under this competition:

(1) Programs which will serve predominantly low-income communities;

(2) Partnerships which will run programs during the regular school year and the summer; and

(3) Programs which will serve educationally disadvantaged students; potential dropouts; pregnant adolescents and teen parents; or children of migratory agricultural workers or of migratory fishermen.

Based on the recommendation of the Congress in the Conference Report (H. Rep. 101–274, p. 42 (Oct. 6, 1989)) and the Senate Report (S. Rep. 101–127, p. 282 (Sept. 13, 1989)) that accompanied the Department of Education Appropriations Act for 1990 (Pub. L. 101–166), the Secretary is also interested in applications that meet the following invitational priority:

Projects that will link a community college, secondary schools, and a university and emphasize advancement to higher education and degree completion, leading to employment. Projects may identify low-income students in their junior year of high school, prepare them to continue their technical education at the community college, and provide them with the opportunity to complete a degree program at a university.

However, under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of School, College, and University Partnerships program including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the School, College, and University Partnerships program.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the School, College, and University Partnerships program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identifed those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The Budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(**Cross-reference:** See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 18, 1987, pages 44338–44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.204, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that this address is not the same address as the one to which the applicant submits its completed application. Do not send application to the above address.

Instructions for Transmittal of Applications

No grant may be awarded unless a complete form has been received.

(a) If an applicant wants a new grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to:

U.S. Department of Education,
Application Control Center, Attention: (CFDA # 84.204) room 3633,
Washington, DC 20202–4725

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to:

U.S. Department of Education,
Application Control Center, Attention: (CFDA # 84.204) room 3633, 7th & D Streets, SW., ROB-3, Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 732–2495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of this application form for Federal assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into six parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget information—Non-Construction Programs (Standard Form 424–A) and instructions.

Part III: Application Narrative.

Part IV: Partnership Agreement.

Part V: Listing of the secondary school or schools to be involved in the project.

Part IV: SCUP Program Assurances.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424–B).

Certification regarding Debarment, Suspension, and other Responsibility Matters: Primary Covered Transaction (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, and Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions.

(**Note:** ED Form GCS–009 is intended for the use of grantees and should not be transmitted to the Department.)

Certification regarding Drug-Free Workplace Requirements:

Grantees Other than Individuals (ED 80–0004).

Certification Regarding Lobbying for Grants and Cooperative Agreements (ED 80–0008).

(**Note:** This form is required if requesting, making, or entering into a grant or cooperative agreement for more than $100,000.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Mrs. May J. Weaver, Chief, Special Services Branch, Division of Student Services, Office of Postsecondary Education, Department of Education, Room 3066, ROB–3, 400 Maryland Avenue SW., Washington, DC 20202–5249. Telephone (202) 732–4804.

Program authority: 20 U.S.C. 1105a–1105c.

Dated: April 2, 1990.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

BILLING CODE 4000–01–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name.	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 0 4

TITLE: School, College, and University Partnerships

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SUPPLEMENTAL INSTRUCTIONS FOR STANDARD FORM 424

Item # 2: If the applicant organization has been assigned an ED entity number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full ED entity number in the space entitled "Applicant Identifier."

Item #16: Applicants are required to contact the State Single Point of Contact for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Applicants must complete either Item 16a or 16b to indicate whether or not the application is subject to State review.

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. SCHOOL YEAR	84.204	$	$	$	$	$
2. SUMMER	84.204					
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1) School Year	(2) Summer	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

Supplemental Budget Instructions

Clearly separate the amounts requested for the regular school year activities and the summer activities in sections A and B of Standard Form 424A, Budget Information—Non-Construction Programs.

In addition, attach a descriptive budget narrative for both the regular school year activities and the summer activities. The budget narrative should explain the amounts for each individual object class category for both the Federal dollars and for the non-Federal commitments. For the in-kind contributions, the budget narrative should provide the following information: (1) source(s) of the contribution, (2) the dollar value of the donated services, supplies, equipment, etc., and (3) an explanation as to how the value of these contributions was determined. (Refer to EDGAR, 34 CFR part 74, subpart G and 34 CFR 80.24.)

The following details should also be provided.

Personnel: Provide a breakdown of project personnel that includes position, percent of time committed to the project, total salary to be charged to the grant, and the dollar value of any in-kind contributions under personnel.

Fringe Benefits: Include an explanation and appropriate justification if the fringe benefit contribution exceeds 20 percent.

Travel: Indicate the amounts requested for out-of-state travel of project staff only. All travel expenditures should be detailed as to purpose and must be justified in relation to the project objectives. For each trip the following information should be provided: number of travelers, mode of transportation and estimated cost, mileage allowances for privately owned vehicles, and per diem costs.

Equipment: List items of equipment in the following format: Item, Number of Units, Cost per Unit, Total Cost, and Estimated Use Time. Equipment requests must be fully justified and necessary to carry out the project objectives and activities.

Supplies: Provide a breakdown of costs for office supplies and instructional supplies.

Other: Provide a breakdown of all direct costs not clearly covered by other budget categories. Examples are computer use charges, equipment rental, communication costs, printing, student stipends, student transportation, in-state travel, and consultant services. Identify the consultants that will work on the project and the scope of work to be performed by each consultant. Provide a detailed breakdown of the costs, i.e., daily fees to be paid, estimated number of days of service, and all travel expenses, including per diem. Cost allowances for consultant fees, honorarium, per diem and travel should not exceed amounts permitted by comparable institutional policies.

Indirect Charges: Indirect costs to be charged to the program may not exceed 8 percent of the Total Direct Charges. (Refer to EDGAR, part 75.562)

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully all the information included in this application package, especially the program purpose, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;
2. Describe the programs to be developed and operated by the partnership and provide information on how the purposes of the program are to be met;
3. Describe the proposed project in light of each of the selection criteria in the order the criteria are listed in this application package; and
4. Include any other pertinent information that might assist the Secretary in reviewing the application.

Please limit the Application Narrative to no more than 50 double-spaced, typed pages (on one side only).

BILLING CODE 4000-01-M

PART IV -- PARTNERSHIP AGREEMENT

INSTRUCTIONS: Applicants are required to submit a written partnership agreement with the application for funding under the School, College, and University Partnerships program. The partnership agreement must be signed by all partners and must detail the responsibilites of each participant in the partnership and the resources to be contributed by each participant. Applicants may develop their own partnership agreement form or may use the form provided below and attach to it a description of the responsibilities of each partner and the resources to be contributed by each partner.

PARTNERSHIP AGREEMENT

As authorized representatives of our institutions and organizations, we agree to the following terms with respect to our application submitted by _____.

As a condition of receiving a grant under the School, College, and University Partnerships program, we:

-- will perform the activities outlined in the application;

-- will provide the resources as indicated in the application narrative and budget;

-- will provide a representative to the project's governing body; and

-- will be bound by all other statements and commitments contained in the application.

_____ _____
Signature and Title Date

_____
Organization

_____ _____
Signature and Title Date

_____
Organization

_____ _____
Signature and Title Date

_____
Organization

(Note: Add or delete signature spaces as necessary)

PART V -- LISTING OF SECONDARY SCHOOLS

INSTRUCTIONS: Applicants are required to submit with the application for funding a listing of the public and private nonprofit secondary school or schools to be involved in the project.

PART VI -- SCUP PROGRAM ASSURANCES

INSTRUCTIONS: Applicants are required to provide the following assurances. This assurance form must be signed by an authorized representative of the legal applicant.

ASSURANCES

The applicant hereby assures and certifies that:

--The partnership will establish a governing body that includes one representative of each participant in the partnership.

--Federal funds will provide no more than 70 percent of the cost of the project in the first year, 60 percent of such costs in the second year, and 50 percent of such costs in the third and any subsequent year.

--A local educational agency receiving funds under this program will not reduce its combined fiscal effort per student or its aggregate expenditure on education.

--A local educational agency receiving funds under this program will use the Federal funds so as to supplement and, to the extent practical, increase the resources that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of students participating in the project, and in no case will the Federal funds be used to supplant such non-Federal funds.

_____
Date

_____
Name & Title of Authorized Official

_____
Name of Applicant/Recipient

_____
City, State, Zip Code

BILLING CODE 4000-01-C

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1840–0602, Washington, DC 20503.

(Information collection approved under OMB control number 1840–0602. Expiration date: March 31, 1992)

BILLING CODE 4000–01–M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-008, (REV.12/88)

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

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18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-008, (REV.12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-009, (REV. 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED 80-0004

Certification Regarding Lobbying For Grants and Cooperative Agreements

Submission of this certification is required by Section 1352, Title 31 of the U.S. Code and is a prerequisite for making or entering into a grant or cooperative agreement over $100,000.

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, 'Disclosure Form to Report Lobbying,' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact on which the Department of Education relied when it made or entered into this grant or cooperative agreement. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Organization Name | PR/Award (or Application) Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED 80-0008 12/89

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known*:

Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*: _____

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ **Page** _____ **of** _____

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Standard Form - LLL-A

[FR Doc. 90-8134 Filed 4-10-90; 8:45 am]
BILLING CODE 4000-01-C

federal register

Wednesday
April 11, 1990

Part IV

Department of Defense

Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans; Notice

48 CFR Parts 219 and 252

Department of Defense Federal Acquisition Regulation Supplement; Small Business Subcontracting Plans; Proposed Rule

DEPARTMENT OF DEFENSE

Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans

AGENCY: Department of Defense (DoD).

ACTION: Notice of test program.

SUMMARY: The Department of Defense (DoD) is inviting public comments on its proposed "Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans." The test program will permit selected contractors to negotiate corporate, division, or plant-wide comprehensive subcontracting plans in lieu of individual subcontracting plans.

DATES: Comments concerning the test plan must be received on or before May 11, 1990, to be considered in finalizing the program. Please cite DAR 89–314 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Tim Foreman, ODASD(P)/DARS, c/o OASD (P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Foreman, telephone (202) 697–1688.

SUPPLEMENTARY INFORMATION:

Background

Section 834 of Pub. L. 101–189 provides for the establishment of a Test Program designed to determine whether the negotiation and administration of comprehensive small business subcontracting plans, rather than individual contract subcontracting plans, will increase opportunities for small business concerns under DoD contracts. The proposed test program is described in a document entitled, "Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans."

Contractor participation in the test program will be voluntary. Contractors are invited to express their interest in responding to this Federal Register Notice. Participants will be selected in accordance with criteria stated in the test program document. Upon negotiation and approval of comprehensive subscontracting plans, participating contractors' active DoD contracts which include individual subcontracting plans will be modified to substitute comprehensive subcontracting plans and to delete any small business subcontrating incentive provisions.

Contractors selected for participation in the program will:

- Establish annual goals, which cover all of their DoD business, for subcontract awards to small businesses and to small disadvantaged businesses.
- Establish goals for small business and small disadvantaged business subcontract awards in two industry categories which historically have experienced low small business participation.
- Be relieved of SF 294 individual contract reporting on DoD contracts.

The proposed test program is as follows:

Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans

I. Purpose

This document implements section 834 of Public Law 101–189, the National Defense Authorization Act for Fiscal Years 1990 and 1991. The primary purpose of the Test Program (the Program) is to determine whether the negotiation and administration of comprehensive small business subcontracting plans will result in increased opportunities for small business concerns performing under Department of Defense (DoD) contracts.

II. Authority

The Program is established pursuant to section 834 of the National Defense Authorization Act for Fiscal Years 1990 and 1991.

III. Program Requirements

A. The Program shall be conducted over a period of three (3) years, from October 1, 1990, through September 30, 1993.

B. The selection of contractors for participation in the Program shall be in accordance with section 834(b)(3). That is, large business concerns that, during the fiscal year ending on September 30, 1989:

1. Pursuant to at least five Department of Defense (DoD) contracts, furnished supplies or services (including professional services) to the DoD, engaged in research and development for the Department, or performed construction for Department; and

2. Were paid $25,000,000 or more for such contract activities.

C. For the purposes of the Program, contractors selected to participate shall establish their comprehensive subcontracting plans on the same corporate, division or plant-wide basis under which they submitted the Standard Form (SF) 295 during fiscal year 1989.

D. Where possible, prime contractors selected for participation in the Program will be those that have a DoD contract administration activity presence at the contractor's site.

E. Contractors selected for participation shall:

1. Be eligible in accordance with III(B), (C), (D) and (E),

2. Have reported to the DoD on the SF 295 for the last three fiscal years,

3. Offer a broad range of subcontracting opportunities,

4. Voluntarily agree to participate, and

5. Have at least 5 active contracts that contain subcontracting plans.

IV. Elements of the Comprehensive Small Business Subcontracting Plan

A. The comprehensive small business subcontracting plan shall address each of the eleven elements set forth in paragraph (d) of the clause at FAR 52.219–9, "Small Business and Small Disadvantaged Business Subcontracting Plan."

1. The subcontracting plan, percentage and corresponding dollar goals for awards to small business and small disadvantaged business concerns shall be developed by the contractor for its entire business operation in support of all DoD contracts regardless of dollar value.

2. Participating contractors shall include separate specific goals and timetables for the awarding of subcontracts in two industry categories which have not historically been made available to small business and small disadvantaged business. These industry categories will be recommended by the contractor and approved by the contracting officer. Subcontract awards made in support of the specific industry categories shall also count towards attainment of the overall small business and small disadvantaged business goals.

3. The subcontracting plan shall set forth the prime contractor's actions to publicize prospective subcontract opportunities for small business and small disadvantaged business concerns.

B. Subcontracting plans to be established under the Program shall be submitted by participating contractors to the designated contracting officer 45 days prior to the end of the Government's fiscal year (September 30).

V. Procedures

A. The Service Acquisition Executive within each Military Department and Defense Agency having contractors that meet the requirements of III(B) shall designate one contracting activity to participate in the Program.

B. The designated contracting activity will accomplish the following:

1. With the coordination of the Director, Office of Small and Disadvantaged Business Utilization for their military Department or Defense Agency, select at least two (2) but not more than five (5) eligible prime contractors for participation under the Program.

2. Establish a "Comprehensive Small Business Subcontracting Plan" negotiating team(s) composed as follows:

a. A contracting officer(s) who will be responsible for negotiation and approval of the comprehensive subcontracting plan(s) as well as the responsibilities at FAR 19.705.

b. The contracting activity's Small and Disadvantaged Business Utilization Specialist.

c. The Small and Disadvantaged Business Utilization Specialist of the cognizant contract administration activity that administers the preponderance of the selected prime contractor's contracts and/or the appropriate individual who will administer contractor performance under the test in accordance with FAR 19.706 and the provisions herein.

d. Production specialist, price analyst and other functional specialists as appropriate.

C. The designated contracting officer shall:

1. Solicit proposed comprehensive subcontracting plans from selected contractor(s) by July 1, 1990, and annually thereafter.

2. By October 1, 1990, and annually thereafter, review, negotiate and approve on behalf of the DoD a comprehensive subcontracting plan for each selected contractor.

3. Distribute copies of approved subcontracting plan in accordance with VI(A) below.

4. Upon negotiation and acceptance of the comprehensive subcontracting plan, the contracting officer shall obtain from the contractor:

a. A listing of all active DoD contracts that contain individual subcontracting plans required by section 211 of Public Law 95–507.

b. The listing shall include the following:

i. Contract number.

ii. Name and address of the contracting activity.

iii. Contracting officer's name and phone number.

5. Upon receipt of the information provided by the participating contractor under 4 above, the contracting officer shall notify the designated administrative contracting officer to issue a comprehensive change order, which modifies all of the contractor's active DoD contracts that include subcontracting plans. The modification will substitute the contractor's approved comprehensive subcontracting plan for the individual plans, will substitute the clauses at DFARS 252.219–7015 and 252.219–7016 for the clauses at FAR 52.219–9 and 52.219–16, respectively, and will delete the clauses at FAR 52.219–10 and DFARS 252.219–7000 and 252.219–7009, as appropriate.

6. Review quarterly, with the contract administration activity, contractors' performance under the plan. Document the review findings and distribute, in accordance with VI(A), within 45 days of the end of the quarter.

7. By November 15, 1991, and annually thereafter, determine whether the contractor has met its comprehensive subcontracting goals. If the goals have not been met, determine whether there is any indication that the contractor failed to make a good faith effort and if appropriate assess liquidated damages, in accordance with FAR subpart 19.7.

8. By December 15, 1993, prepare and submit a report on each participating contractor's performance which details the results of the Program. The report must compare the contractor's performance under the Program with its performance for fiscal years 1988, 1989, and 1990. The report distribution will be in accordance with VI(A) below.

D. Participating contractors:

1. Shall establish their comprehensive subcontracting plans on the same corporate, division or plant-wide basis under which they submitted the Standard Form (SF) 295 during fiscal year 1989.

2. Upon negotiation of an acceptable comprehensive subcontracting plan shall be exempt from individual contract by contract reporting requirements for DoD contracts.

3. Shall continue individual contract reporting on non-DoD contracts.

4. Shall comply with the flow down provisions of section 211 of Public Law 95–507. Large business concerns receiving a DoD subcontract in excess of $500,000 ($1,000,000 for construction) are required to adopt a plan similar to that mandated by the clause at 52.219–9. Participating contractors are prohibited from flowing down the "Comprehensive" subcontracting deviations provisions of 252.219–7015. Accordingly, large business subcontractors to the participating contractors shall be required to establish individual subcontracting plans with specific goals for awards to small business and small disadvantaged business.

5. Upon expulsion from the Program or Program termination on September 30, 1993, shall negotiate and establish individual subcontracting plans on each active DoD contract that otherwise meets the requirements of section 211 of Public Law 95–507. Failure to negotiate a subsequent acceptable plan will result in the expulsion of the contractor from the Program.

VI. Monitoring and Reporting of Comprehensive Subcontracting Plans and Goals

A. Upon negotiation and acceptance of comprehensive subcontracting plans and goals the designated activity shall immediately forward one copy of the plan to each of the following:

1. Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition), Room 2A340, The Pentagon, Washington, DC 20301–3061.

2. Director, Small and Disadvantaged Business Utilization, for the Military Department or Defense Agency of the activity that negotiated and accepted the comprehensive subcontracting plan.

3. The cognizant contract administration office.

B. Each participating contractor shall complete the Standard Form (SF) 295 "Summary Subcontract Report" in accordance with the instructions on the back of the form on a quarterly basis, except as noted below:

1. Participating contractors shall be exempt from completing items 12 and 13 under "Subcontract Goal Achievement."

2. Participating contractors shall enter in item 14 the annual corporate, division or plant-wide small business and small disadvantaged business percentage and corresponding dollar goals.

3. Participating contractors shall also enter separately in item 14 the percentage and corresponding dollar goals for each of the two selected industry categories (see section IV(A)(2)).

4. Participating contractors shall also enter separately in item 14 on a quarterly cumulative basis the percentage and corresponding dollar amount of subcontract awards made in each of the two selected industry categories.

5. Participating contractors shall be exempt from the completion of SF 294 "Subcontract Report For Individual Contracts" for DoD contracts during their participation in the Program.

Tim Foreman,

Office of Small and Disadvantaged Business Utilization.

[FR Doc. 90–8318 Filed 4–10–90; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252

Federal Acquisition Regulation Supplement; Small Business Subcontracting Plans

AGENCY: Department of Defense.

ACTION: Proposed rule and request for comment.

SUMMARY: The Defense Acquisition Regulatory Council is considering revising DFARS subpart 219.7 and part 252 to implement the Department of Defense "Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans". The test program will permit selected contractors to negotiate corporate, division, or plant-wide comprehensive subcontracting plans in lieu of individual contract subcontracting plans.

DATES: Comments on the proposed rule must be received by May 11, 1990, to be considered in formulating the final rule. Please cite DAR Case 89–314 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mrs. Alyce Sullivan, DAR Council, ODASD(P)/DARS, % OASD (P&L)(M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, DAR Council, telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 834 of Pub. L. 101–189 requires the Secretary of Defense to establish a test program to determine whether the use of corporate, division, or plant-wide comprehensive subcontracting plans rather than individual contract subcontracting plans will increase opportunities for small business concerns. The proposed test program is described in a document entitled "Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans", published elsewhere in this issue.

Revision of DFARS subpart 219.7 is proposed to permit contractors selected for participation in the test program to negotiate and use corporate, division, or plant-wide comprehensive subcontracting plans in all of their contracts with the DoD which require a plan. Contractors participating in the program will be relieved of the requirement for submission of SF 294, Subcontracting Report for Individual Contracts, during the three-year period of the test.

B. Regulatory Flexibility Act

It is not anticipated that this proposed rule will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq. This rule addresses only a limited number of large contractors with plans and does not have a direct impact on small businesses. Accordingly, an Initial Regulatory Flexibility Analysis has not been prepared. Comments are invited from small businesses and other interested parties and will be considered in determining whether or not a Final Regulatory Flexibility Analysis is required. Comments from small entities concerning the affected DFARS sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 90–610.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because this rule does not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Linda E. Greene,

Deputy Director, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR parts 219 and 252 be amended as follows:

1. The authority citation for 48 CFR parts 219 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. Section 219.702 is amended by adding paragraph (a) to read as follows:

219.702 Statutory requirements.

(a) Contractors who have been selected for participation in the test program authorized by Section 834 of Pub. L. 101–189 and who have approved comprehensive subcontracting plans are not required to negotiate subcontracting plans on an individual contract basis for Department of Defense contracts. Section 834 authorizes the Department of Defense to establish a test program to determine whether comprehensive subcontracting plans on a corporate, division, or plant-wide basis will increase subcontracting opportunities for small business concerns. Under the test program, contractors selected for the test will negotiate comprehensive small business subcontracting plans will a designated DoD contracting activity for use in all DoD contracts that require subcontracting plans. The plans are negotiated on a Government fiscal year basis and are renegotiated annually for the three-year period of the test which begins October 1, 1990. The approved comprehensive subcontracting plans will apply to and shall be included in all DoD contracts with the selected contractor which are active or awarded on or after October 1, 1990, and require subcontracting plans.

3. Section 219.708 is amended by adding paragraphs (b)(1) and (b)(2); by adding in the first sentence of paragraph (c)(1) between the reference "(c)(2)" and the word "below" the words "and (c)(3)"; by removing the last sentence of paragraph (c)(1); and by adding paragraph (c)(3), to read as follows:

219.708 Solicitation provisions and contract clauses.

* * * * *

(b)(1) Department of Defense contracting activities shall use the clause at 252.219–7015, Small Business and Small Disadvantaged Business Subcontracting Plan (DoD FAR Supplement Deviation), in lieu of the clauses at 252.219–7000, Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts), and FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, in contracts with contractors who have comprehensive subcontracting plans approved under the test program authorized by Section 834 of Pub. L. 101–189. (See 219.702(a).)

(2) Department of Defense contracting activities shall use the clause at 252.219–7016, Liquidated Damages—Small Business Subcontracting Plan (DoD FAR Supplement Deviation), in lieu of the clause at FAR 52.219–16, Liquidated Damages—Small Business Subcontracting Plan, in contracts with contractors who have comprehensive subcontracting plans approved under the test program authorized by Section 834 of Pub. L. 101–189. (See 219.702(a).)

* * * * *

(c) * * *

(3) When the clause at 252.219–7015, Small Business and Small Disadvantaged Business Subcontracting

Plan (DoD FAR Supplement Deviation), is prescribed, award fee provisions and the clauses at 252.219–7009, Incentive Program for Subcontracting With Small and Small Disadvantaged Business Concerns, Historically Black Colleges and Universities and Minority Institutions, and at FAR 52.219–10, Incentive Subcontracting Program for Small Business and Small Disadvantaged Business Concerns, shall not be used.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Sections 252.219–7015 and 252.219–7016 are added to read as follows:

252.219–7015 Small Business and Small Disadvantaged Business Subcontracting Plan (DoD FAR Supplement Deviation).

As prescribed in 219.708(b)(1), insert the following clause:

Small Business and Small Disadvantaged Business Subcontracting Plan (DoD FAR Supplement Deviation) (1990)

(a) Definition. "Subcontract", as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(b) The Offeror's comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the test program of Section 834 of Pub. L. 101–189, shall be included in and made a part of the resultant contract. Upon expulsion from the test program or expiration of the test program, the Contractor shall negotiate an individual subcontracting plan for all active contracts that meet the requirements of Section 211 of Pub. L. 95–507.

(c) The Contractor shall submit Standard Form 295, Summary Subcontract Report, in accordance with the instructions on the form, except (1) Items 12 and 13 shall not be completed; (2) Item 14, Remarks, shall be completed to include small business and small disadvantaged business goals, actual accomplishments, and percentages and small business and small disadvantaged business goals, actual accomplishments and percentages for each of the two designated industry categories.

(d) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

252.219–7016 Liquidated Damages—Small Business Subcontracting Plan (DoD FAR Supplement Deviation).

As prescribed in 219.708(b)(2), insert the following clause:

Liquidated Damages—Small Business Subcontracting Plan (DoD FAR Supplement Deviation) (1990)

(a) "Failure to make a good faith effort to comply with the comprehensive subcontracting plan", as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the comprehensive subcontracting plan approved under the test program authorized by section 834 of Pub. L. 101–189, or willful or intentional action to frustrate the plan.

(b) If, at the close of the fiscal year for which the plan is applicable or at the close of a subsequent fiscal year for which a successor plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its comprehensive subcontracting plan, the Contractor shall pay the Government liquidated damages in an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the comprehensive subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) The Contracting Officer of the agency that originally approved the comprehensive subcontracting plan will exercise the functions of the Contracting Officer under this clause on behalf of all Department of Defense departments and agencies that awarded contracts covered by the Contractor's comprehensive subcontracting plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)

[FR Doc. 90–8317 Filed 4–10–90; 8:45 am]

BILLING CODE 3810–01–M

federal register

Wednesday,
April 11, 1990

Part V

Department of Health and Human Services Social Security Administration

Supplemental Security Income (SSI) for the Aged, Blind, and Disabled; Outreach Demonstration Program; Announcement of Fiscal Year (FY) 1990 Availability of Cooperative Agreement and Grant Funds and Request for Applications

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Supplemental Security Income (SSI) for the Aged, Blind, and Disabled; Outreach Demonstration Program; Announcement of Fiscal Year (FY) 1990 Availability of Cooperative Agreement and Grant Funds and Request for Applications

AGENCY: Social Security Administration, HHS.

ACTION: Announcement of the availability of FY 1990 funds and a request for applications under the SSI Outreach Demonstration Program.

SUMMARY: The Commissioner of Social Security announces the opening of the SSI Outreach Demonstration Program for FY 1990. Applications will be accepted for cooperative agreements and grants which increase outreach efforts to needy aged, blind, and disabled individuals who are potentially eligible for SSI benefits. By outreach, we mean identifying potentially eligible individuals, helping them understand their rights under the SSI program and assisting them in applying for benefits. The Social Security Administration (SSA) is particularly interested in a wide range of cooperative agreement and grant proposals under this announcement. Funding for this program is authorized under section 1110 of the Social Security Act.

This announcement consists of three sections:

- Section I provides background information, discusses the purpose of the SSI Outreach Demonstration Program and briefly describes the application process.
- Section II describes the programmatic priorities under which SSA is requesting applications for funding.
- Section III describes in detail the application process.

All the forms and instructions necessary to submit an application may be obtained by calling or writing SSA (please refer to section III for complete instructions). In addition, we have included an overview of SSA's organization in the application kit. We encourage applicants to become knowledgeable about SSA's operations as well as the eligibility rules of the SSI program. Pamphlets and other public information materials may be obtained from any local Social Security office.

DATES: The closing date for receipt of cooperative agreement and grant applications under this announcement is June 11, 1990.

FOR FURTHER INFORMATION CONTACT: SSA, Office of Supplemental Security Income, Division of Program Management Analysis, SSI Outreach Demonstration Program Branch, 3–R–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, 301–965–9798.

SUPPLEMENTARY INFORMATION:

Section I

A. The SSI Program

SSI is a Federal program administered by SSA. The program is financed from general revenue funds of the U.S. Treasury and provides monthly benefit payments to aged, blind, and disabled people who have limited resources and income. In 1990, the Federal benefit rate for an individual is $386 per month and $579 per month for a couple. In addition, many States supplement the Federal benefit; the supplementary benefit amounts and the categories of persons eligible for these benefits vary from State to State. In most States, eligibility for SSI means eligibility for Medicaid; the extent of the Medicaid coverage package varies by State. SSI recipients may also be eligible to receive Food Stamps in all States but California and Wisconsin, where the State's supplementary payments are considered to include the value of Food Stamps.

To be eligible, a person must be age 65 or older or disabled or blind, have limited resources and income, and meet certain other requirements. A person is considered disabled if a physical or mental impairment or combination of impairments prevents the person from doing any substantial gainful work and is expected to last for at least 12 months or to result in death. Disabled or blind children as well as adults may be eligible. SSA works cooperatively with the States, who are responsible for making disability and blindness determinations through their Disability Determination Services (DDS). SSA takes a detailed medical history from the applicant during the initial interview and sends that information to the DDS. The DDS then secures medical records and, if needed, arranges an additional medical examination. Based upon this evidence, a disability or blindness determination is then made.

In addition to age, disability or blindness, an individual or couple must meet resource, income, and residency requirements. In 1990, the resource limits are $2,000 for an individual and $3,000 for a couple. However, not everything that a person owns is counted.

An individual or couple may have earned or unearned income and still may be eligible for the SSI program. A certain amount of income is disregarded in determining eligibility and computing the SSI benefit amount. People who live in a State that supplements the Federal payment may have higher amounts of income and still may qualify for some benefits.

To be eligible for SSI a person must reside in the U.S. or the Northern Mariana Islands and be a U.S. citizen, an alien lawfully admitted for permanent residence, or an alien permanently residing in the U.S. under "color of law" (PRUCOL). PRUCOL is defined in the Code of Federal Regulations at title 20, § 416.1618.

B. SSA Goals and Objectives

A primary goal of SSA is to serve the public with compassion, courtesy, consideration, efficiency, and accuracy. We will accomplish this, in part, through aggressive SSI outreach activities to potentially eligible individuals.

C. Purpose of the SSI Outreach Demonstration Program

In FY 1990, SSA will award a series of SSI outreach demonstration projects. The goal of these projects will be to demonstrate effective, ongoing, and transferrable approaches for identifying potentially eligible needy aged, blind, and disabled individuals and assisting these individuals in the application process. On February 2, 1990, SSA published a notice in the **Federal Register** requesting recommendations for establishing priority areas for outreach demonstrations (55 FR 3645). More than 175 comments were received and considered in the formulation of this announcement.

SSA is interested in proposals for cooperative agreements and grants which "break new ground"; that is, efforts that extend and/or enhance current outreach efforts conducted by SSA's field offices or other organizations such as State or local governments or private entities. We are seeking effective approaches which fill gaps in existing programs or create new outreach mechanisms. SSA has little interest in proposals which replicate existing efforts unless such proposals include a major new component which will lead to significant increases in the numbers of people being reached and approved for benefits. SSA is also interested in projects that can continue in some manner in a community after Federal funding ceases, whether this be through the establishment of a formal network of contacts, the creation of an

organization that becomes self-supporting, etc. A last important consideration is whether the knowledge to be gained from the project has the potential to be transferrable from the local community to other similar communities on either a regional or national basis. SSA plans to incorporate successful outreach techniques learned through this demonstration program into its own national procedures and to disseminate this information to the public and social service providers as well.

D. Cooperative Agreements and Grants

Legislative authority for the Outreach Demonstration Program is contained in section 1110 of the Social Security Act, which provides, in part, for projects that assist in promoting the objectives or facilitate the administration of the SSI program. The regulatory requirements that govern the administration of all Department of Health and Human Services (DHHS) cooperative agreements and grants are located in title 45 of the Code of Federal Regulations (CFR), parts 74 and 92. Applicants are urged to review the requirements in the applicable regulations.

A cooperative agreement anticipates substantial involvement between SSA and the applicant during the performance of the project. This involvement may include collaboration or participation by SSA in the management of the activity as determined at the time of the award. A grant will be awarded for those projects where SSA determines that there will be little or no collaboration or participation by SSA in the performance of the activity as long as it is performed in accordance with the provisions specified in the approved grant application.

SSA may suspend or terminate any cooperative agreement or grant in whole or in part at any time before the date of expiration, whenever it determines that the awardee has materially failed to comply with the terms of the cooperative agreement or grant. SSA will promptly notify the awardee in writing of the determination and the reasons for the suspension or termination together with the effective date.

E. Number, Size, and Duration of Projects

SSA generally expects to fund 15 to 20 demonstration projects that cost between $175,000 and $230,000 and can be completed within 12 to 17 months. SSA may, however, fund some projects at higher or lower amounts and for shorter periods of time.

F. Fiscal Year 1990 Cooperative Agreement and Grant Application Process

The cooperative agreement and grant application process for FY 1990 will consist of a one-stage, full application. The program narrative (part III of form SSA–96–BK) is limited to 20 double-spaced pages (excluding forms, etc.) and will be reviewed by independent reviewers against the evaluation criteria established for review of applications (see section III). Applications will also be reviewed against others targeting the same population; for example, all applications focusing on the aged will be competitively reviewed against each other.

Priority areas in this announcement permit applicants to propose demonstration efforts not to exceed 17 months in duration. In item 11 of the Face Page (page 1 of form SSA–96–BK) indicate the priority area under which the application is submitted. For example, indicate priority area "001" for projects which target the elderly; for projects targeting multiple groups of eligibles, indicate "006."

Applicants should be aware that the awarding of cooperative agreements and grants is subject to the availability of funds. In making the funding award decisions, SSA will pay particular attention to applications which focus on or feature an elimination of multiple barriers to eligibility as well as target areas of the United States with a high incidence of individuals with incomes at or below the Federal poverty level. In making decisions, SSA will also try to equitably distribute assistance among the priority areas and target population subgroups described in part II, section B. The Commissioner of Social Security will also take into account the need to avoid duplication of effort in making funding decisions.

G. Technical Assistance Workshops for Prospective Applicants

SSA will hold workshops to provide guidance and technical assistance to prospective applicants. Please call the SSI Outreach Demonstration Project Branch at 301–965–9798 no later than 7 days prior to the workshop for further information.

Date	Location
4/30	Baltimore MD.
5/2	Atlanta, GA.
5/9	New York City, NY.
5/10	Chicago, IL.
5/17	Dallas, TX.
5/24	San Francisco, CA.

Section II

A. Overview

One of SSA's major goals is to serve the public with compassion, courtesy, consideration, efficiency, and accuracy. The Outreach Demonstration Program will help SSA achieve this goal by demonstrating and testing the feasibility of special approaches and services to identify and assist needy individuals in filing for SSI benefits.

This section of the program announcement lists the FY 1990 target populations to be reached, the barriers to be reduced or eliminated, and some of the types of approaches that may be tested. Cooperative agreement and grant applications will be reviewed against others in the same priority area; for example, all applications focusing on the aged will be competitively reviewed against each other.

B. Priority Areas

Approximately 4,614,000 persons received a Federal SSI benefit or a federally administered State supplement in January 1990. Of these, 1,439,000 were aged recipients (eligibility based on being age 65 or over) and 3,175,000 were blind and disabled recipients. Of the 3,175,000 blind and disabled recipients, there were approximately 565,000 who were age 65 or over, and 250,000 who were under age 18 (disabled children). Since eligibility is determined on a monthly basis, the number of persons receiving benefits for at least 1 month in the year will exceed the monthly totals. SSA estimates that over 5 million persons will receive at least 1 month of benefits during 1990.

SSA estimates that a significant number of people are potentially eligible for SSI benefits but, for a variety of reasons, have not filed for them. These potentially eligible individuals fall into all SSI eligibility groups. SSA has therefore established the priority areas for the SSI Outreach Demonstration program based upon these eligibility categories. Please indicate which priority area your proposal will target: The aged (001), blind adults (002), blind children (003), disabled adults (004), disabled children (005), or multiple groups of eligibles (006).

Within these groups, SSA is particularly interested in approaches that will reach out to the following subgroups (not in priority order):

—Individuals living in areas of the

United States with a high incidence of individuals with incomes at or below the Federal poverty level.
—Urban
—Suburban
—Rural
—Frail, elderly individuals.
—Homeless individuals.
—Members of minority and ethnic groups.
—Disabled individuals with Acquired Immunodeficiency Syndrome (AIDS) or AIDS-Related Complex (ARC), mental illness, mental retardation, or substance abuse problems.
—Disabled individuals who may be working or who are not working now but are interested in working and might still qualify for some SSI benefit.

All applications should clearly state which priority area it is focusing on as well as which target population subgroup(s), if any.

C. Barriers to Filing for Benefits

SSA is aware that barriers exist that prevent potentially eligible individuals and couples from filing for SSI benefits. Some of the barriers identified are (not in priority order):
—Lack of correct information about the SSI program by the target population and by outside organizations that provide services to these persons,
—Inability to handle one's own financial affairs, which may require another individual to assist in making application and, when an applicant is eligible, to receive the benefits as a representative payee,
—English language illiteracy,
—Limited exposure to traditional communications media,
—Disabilities which limit mobility and connection with social services organizations.
—Reluctance to accept/admit disability as a permanent condition,
—Fear/stigma associated with disability, such as AIDS/ARC, cancer, mental illness, mental retardation,
—Homelessness often coupled with mental illness or drug addiction/alcoholism,
—Perceived welfare stigma of receiving SSI benefits,
—Distrust or fear of government bureaucracy,
—Concern that eligibility will preclude work or future work attempts,
—Lack of transportation and/or access to a telephone,
—Lack of understanding about how to contact SSA field offices,
—Lack of current connection with social service organizations, and
—Homebound status due to age or infirmity.

All applications should clearly state which barriers to filing for benefits will be reduced or eliminated through the demonstration project.

D. Approaches to Outreach

SSA is interested in cooperative agreement and grant proposals featuring approaches that are effective in reaching the priority areas and target population subgroups described above and reducing or eliminating one or more barriers. Some examples of such approaches are (not in priority order):
—Case Management—Identify potential eligibles and assist them through the SSI application process (help collect the information needed to complete the eligibility process, secure necessary supporting documentation and, when necessary, provide transportation to medical examinations). If the individual is awarded SSI benefits and is unable to handle his/her financial affairs, identify suitable representative payee. Provide appropriate support on a post-entitlement basis to enable the new recipient to fulfill reporting responsibilities and maintain eligibility.
—Public/Private Coalition and Multi-Agency Agreements—Establish coalitions between public and private organizations and agreements between various Federal, State, and local agencies of government that will establish working relationships linking SSA with other organizations and agencies to facilitate communication to help identify potential eligibles and to assist those individuals with the application process. Some techniques that could be used are door-to-door canvassing, discussions at meetings of local community groups, publicity in local or ethnic newspapers, etc.
—Transportation—Overcome barriers caused by distance from SSA field facilities in some areas and lack of/poor public transportation systems by providing various forms of transportation to bring potentially eligible individuals to the local SSA field offices as well as to required medical examinations.
—Public Information—Develop a marketing strategy designed to overcome literacy, language, and educational barriers through appropriate materials and services that inform people about the SSI program and refer them to the local SSA office. Creatively use non-traditional methods to reach individuals outside the mainstream of mass communication media. All public information proposals must identify what need will be met by the new material and justify why current SSA materials are inadequate to meet that need. SSA is currently revising all SSI pamphlets based on public input and is, therefore, not interested in applications which propose production of pamphlets.
—Targeted Mailings—Use community or charitable organizations' mailing lists to contact potential eligibles and refer them to the local SSA field office.
—Representative Payment—Identify individuals who need assistance applying for SSI benefits or managing finances. Match those individuals with volunteers from State and local community organizations (such as groups affiliated with churches or synagogues, action centers, community service clubs, and others). The volunteers will assist individuals in filing for the pursuing benefits with SSA. They will be available for appointments as representative payees to manage monthly payments for newly eligible recipients and to assist currently entitled recipients in reporting changes in status.

These examples are not all inclusive. All applicants should clearly state the approach(es) to be used.

E. Content of Proposals

All cooperative agreement and grant proposals must include a priority area; any target subgroups (with supporting demographic information); the barriers that will be reduced or eliminated; and the approaches to be tested. All applications must include a description of plans for measuring progress and success of the project in terms of the number of contacts of potential eligibles by the grantee, the number of inquiries to SSA, the number of applications filed, and, of those, the number of awards of benefits. (SSA will require periodic progress reports on these activities during the course of the project.) Information must be provided showing how any collaborative activities under the project may continue once the cooperative agreement or grant terminates. In addition, the information should show, if applicable, how these activities may be permanently integrated with local SSA field offices' activities.

Section III

A. Eligible Applicants

Any State or local government and public or private organization or agency may apply for a cooperative agreement or grant under this announcement. (Individuals are not eligible to apply.) For-profit organizations may apply with

the understanding that no grant funds may be paid as profit to any cooperative agreement or grant recipient. Profit is considered as any amount in excess of the allowable costs of the recipient. A for-profit organization is a corporation or other legal entity which is organized or operated for the profit or benefit of its shareholders or other owners.

B. Reimbursement of Costs

Federal grant funds may be requested for reimbursement of allowable costs incurred by awardees in conducting the demonstrations. These funds, however, are not intended to cover costs that are reimbursable under an existing public or private program.

C. Grantee Share of the Project Cost

Grant recipients are required to contribute towards the cost of each project. Generally, 5 percent of the total cost is considered acceptable. Grant recipients' contributions may be cash or in-kind (property or services) or third party cash or in-kind contributions. SSA will not provide total funding for any project.

D. Availability of Forms

An application kit containing all instructions and forms needed to apply for a cooperative agreement or grant under this announcement may be obtained by writing or telephoning Grants Management Staff, Division of Contract and Grant Operations, OAG, DCM; Social Security Administration; 1–E–4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, Maryland 21207; telephone (301) 965–9502; Mr. Lawrence H. Pullen, Chief, Grants Management Staff.

When requesting an application kit, the applicant should refer to project announcement number SSA–OSSI–90–1 and the date of this announcement to ensure receipt of the proper kit.

E. Application Submission

All applications requesting Federal funds for cooperative agreement or grant projects must be submitted on the standard forms provided in the application kit. The application shall be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of the cooperative agreement or grant award.

An original and a minimum of two signed copies of the application material must be submitted to the above address. Submittal of six additional copies is optional but will expedite processing; there is no penalty for not submitting the additional copies.

F. Application Consideration

Applications are initially screened for relevance to this announcement. If judged irrelevant, the applications are returned to the applicants.

Applications that are complete and conform to the requirements of this announcement will be reviewed competitively against the evaluation criteria specified in section III, part H, of this announcement and evaluated by Federal and non-Federal personnel. The results of this review and evaluation will assist the Commissioner of Social Security in considering competing applications. Although the results of this review are a primary factor considered in making the decisions about applications, review scores are not the only factor used.

G. Application Approval

Cooperative agreement and grant awards will be issued within the constraints of available Federal funds. The official award document is the "Notice of Cooperative Agreement or Grant Award." It will provide the amount of funds awarded, the purpose of the award, the budget period for which the funding is given, the total project period for which support is contemplated, the amount of grantee financial participation, and any special terms and conditions of the cooperative agreement or grant award. All projects must be operational within 60 days from the date of the issuance of the cooperative agreement or grant notice of award.

H. Criteria for Screening and Review of Applications

All applications that meet the deadline will be screened to determine completeness and conformity to the requirements of this announcement. Complete and conforming applications will then be reviewed and evaluated.

1. Application Screening Requirements: In order for an application to be in conformance, it must meet all of the following requirements:

a. Number of Copies: An original signed application and two signed copies must be submitted. Six additional copies are optional but will expedite processing.

b. Length: The program narrative portion of the application (part III of form SSA–96–BK) may not exceed 20 double spaced pages (or 10 single spaced pages) typewritten on one side of the paper only.

2. Application Evaluation Criteria: Applications which pass the screening will be reviewed by individuals who will score the applications, basing their scoring decisions on the following criteria (relative weights are shown in parenthesis):

a. Project Objective and Expected Benefit (15 points):

i. How closely do the project objectives fit those of the approach to outreach (see section II.D) under which the application is submitted? For other approaches, how well do the objectives of the project fit the general goals and objectives of this announcement?

ii. Are the expected project benefits clearly described and related to the objectives of the project? Are the benefits quantifiable and realistic?

iii. Is the need for the project discussed in terms of local, regional, and/or national significance?

iv. What are the demographics of the area to be targeted? What is the universe of potential eligibles? (Provide data to support these estimates.)

b. Project Design (35 points):

i. Does the proposal contain a logical and detailed plan for accomplishing the objectives of the project? Does it contain a plan for aggressive follow-up with potential eligibles if initial contacts are not successful?

ii. Does the proposed approach offer a reasonable prospect of success in achieving the project's objectives and expected results? Are there any weaknesses in this approach? Are there any unnecessary or inappropriate objectives, tasks, sub-tasks?

iii. Is a time-line (Gantt) chart provided? Are the time sequences, including beginning and ending dates for tasks, clearly identified? Are they logical in terms of their order and placement?

iv. Does the proposal demonstrate an understanding of SSA's organizational structure and SSI application process?

v. Are proposed public information materials clearly described regarding both the need and the approach. Is it clear that existing SSA materials cannot be utilized? (SSA is not interested in the development of pamphlets [see section II.D].

vi. Evaluation plan

1. Are the criteria for evaluation linked to the objectives of the project?

2. Are the evaluation measures and instruments appropriate, practical, and complete?

3. Will an outside evaluator be used to perform the evaluation? If so, why is one needed?

4. What techniques will be used to capture performance data? Are these techniques appropriate and statistically sound?

5. Will the periodic (every 90 days) progress reports provided to SSA quantify the number of contacts of potential eligibles made by the grantee, the number of inquiries to SSA, and the number of applications and awards of benefits that result from project activities?

c. Organization and Budget (30 points):

i. Do the qualifications of the project personnel, as evidenced by training and experience, indicate that they have the skills required to competently carry out the demonstration project and to produce a final report that is comprehensible and usable?

ii. Is the staffing pattern appropriate for the proposed project, linking responsibilities clearly to project tasks and specifying the contributions to be made by key staff?

iii. Does the applicant's organization have adequate facilities and resources to plan, conduct, and complete the project?

iv. Are the resources needed to conduct the project specified, including personnel, time, funds, and facilities?

v. Is the use of volunteers proposed and are they to be used appropriately, with supervision and support from project staff?

vi. Is the proposed budget related to the level of effort required to attain project objectives? Does the cost/benefit analysis demonstrate that the project's costs are reasonable in view of the anticipated results?

vii. Are collaborative efforts with other agencies or organizations clearly identified and documented? How will these efforts enhance the project? (letters of commitment must be included with the application.)

d. Expected Outcomes (20 points):

i. How many contacts are estimated to be made by the grantee with potential eligibles? How many inquiries to SSA, applications, and awards of benefits are estimated to result from the project? (SSA is not interested in percentage increases over prior SSI application rates without concomitant increases in awards.)

ii. Does the proposal explain adequately how the project activities will be replicable in the project site as well as in other areas once the project has been terminated?

iii. Does the proposal explain adequately how SSA will be able to incorporate project techniques into its own outreach program initiative?

iv. In addition to the anticipated number of new awards and the regional and/or national transferability of the project design, what other outcomes are expected?

I. Closing Date for Receipt of Applications

The closing date for submittal of applications under this announcement is May 11, 1990. Applications must be mailed or hand-delivered to: Grants Management Staff, Division of Contract and Grant Operations, OAG, DCM, Social Security Administration, 1–E–4 Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21207, Attention: SSA OSSI–1, Priority Area:_____

Hand-delivered applications are accepted during the hours of 8 a.m. to 5 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

1. Received on or before the deadline date at the above address; or

2. Mailed through the United States Postal Service or sent by commercial carrier on or before the deadline date and received in time to be considered during the competitive review and evaluation process. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier as evidence of timely mailing. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the above criteria are considered late applications. SSA will notify each late applicant that its application will not be considered.

Note: Facsimile copies will not be accepted.

Paperwork Reduction Act

This notice contains reporting requirements in "The Application Process" section. However, the information is collected using Form SSA–96–BK, Federal Assistance, which has OMB clearance number 0960–0184.

Executive Order 12372—Intergovernmental Review of Federal Programs

This program is not covered by the requirements of Executive Order 12372 relating to the Federal policy for consulting with State and local elected officials on proposed Federal financial assistance.

Catalog of Federal Domestic Assistance Program (CFDA) No. 13–812—Assistance Payments—Research and Demonstration.

Approved: April 5, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

[FR Doc. 90–8375 Filed 4–10–90; 8:45 am]

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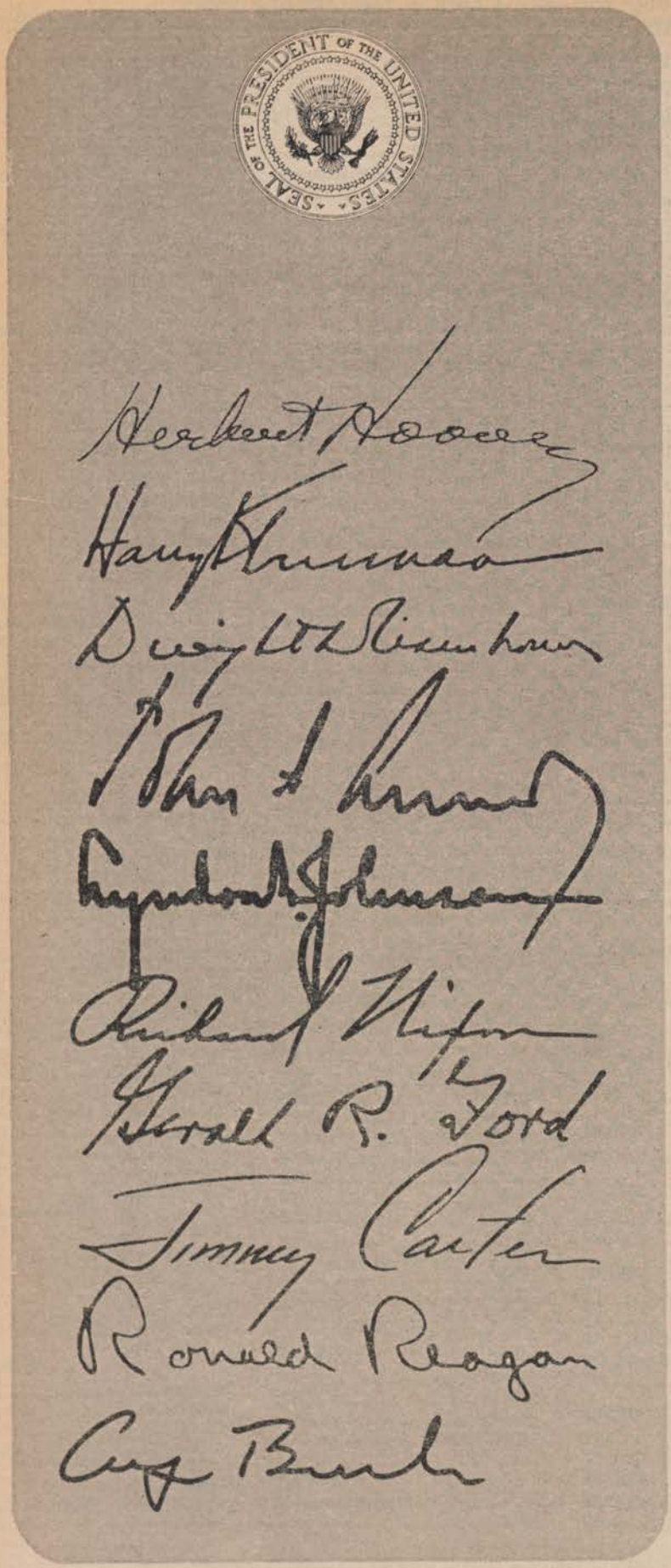

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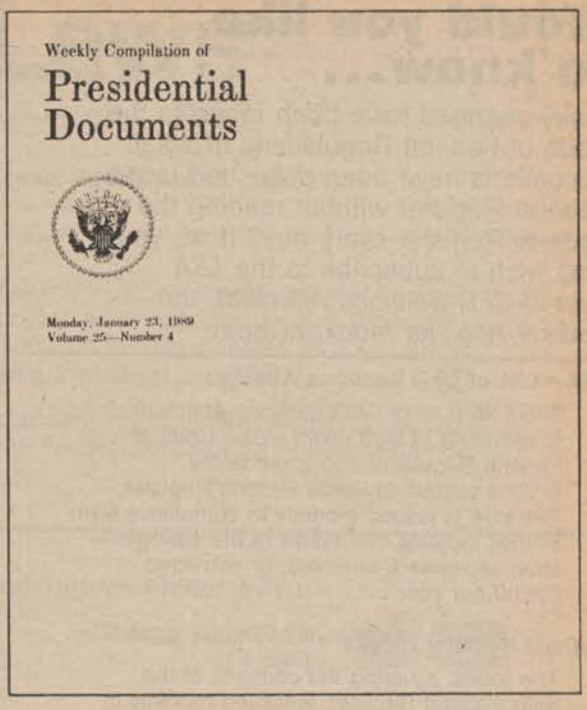

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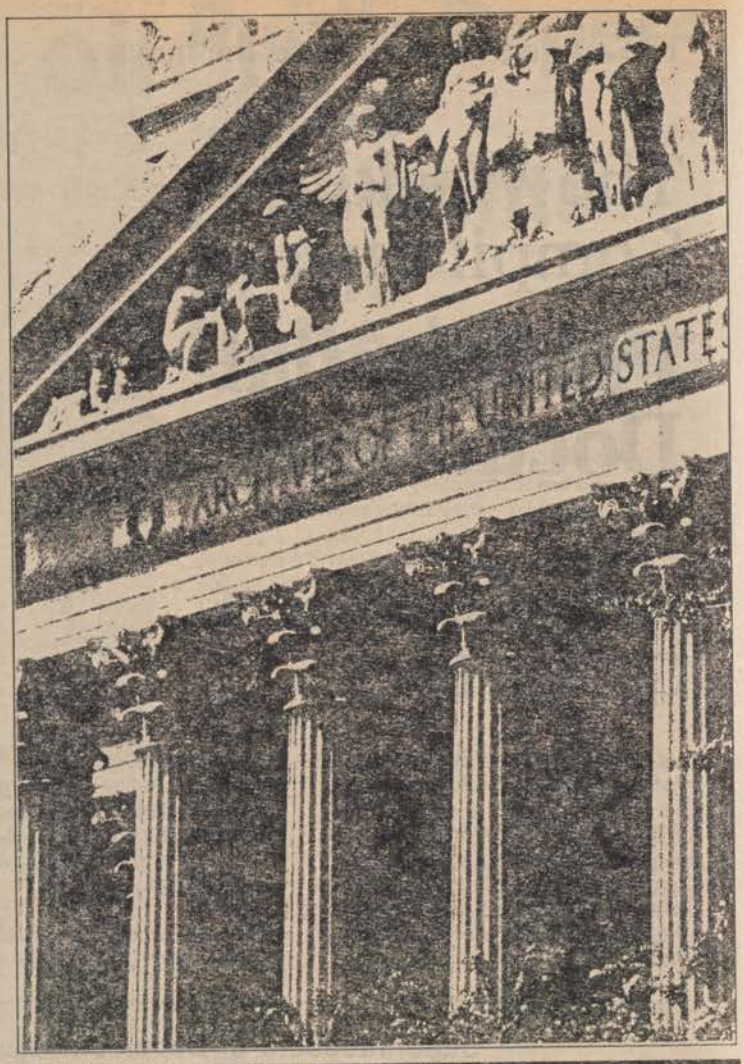

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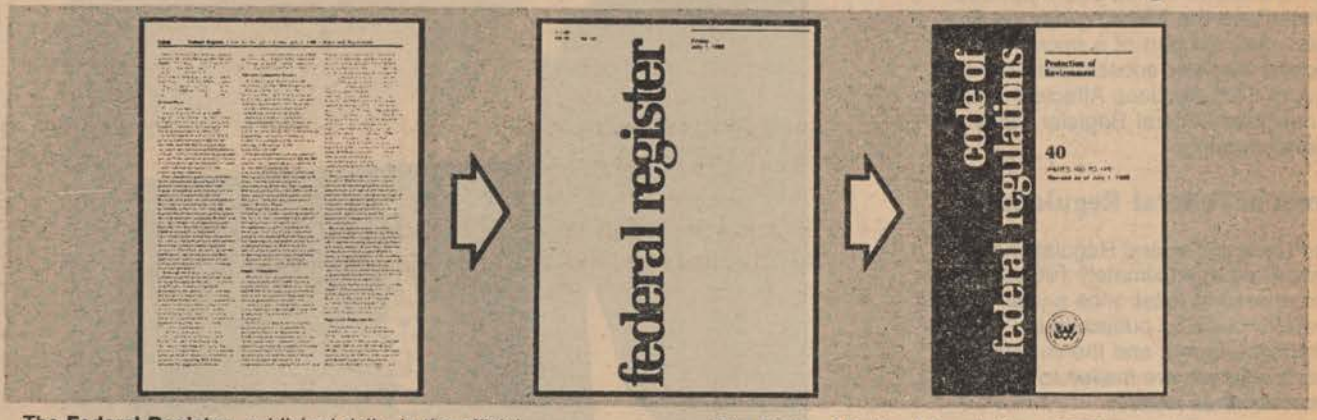

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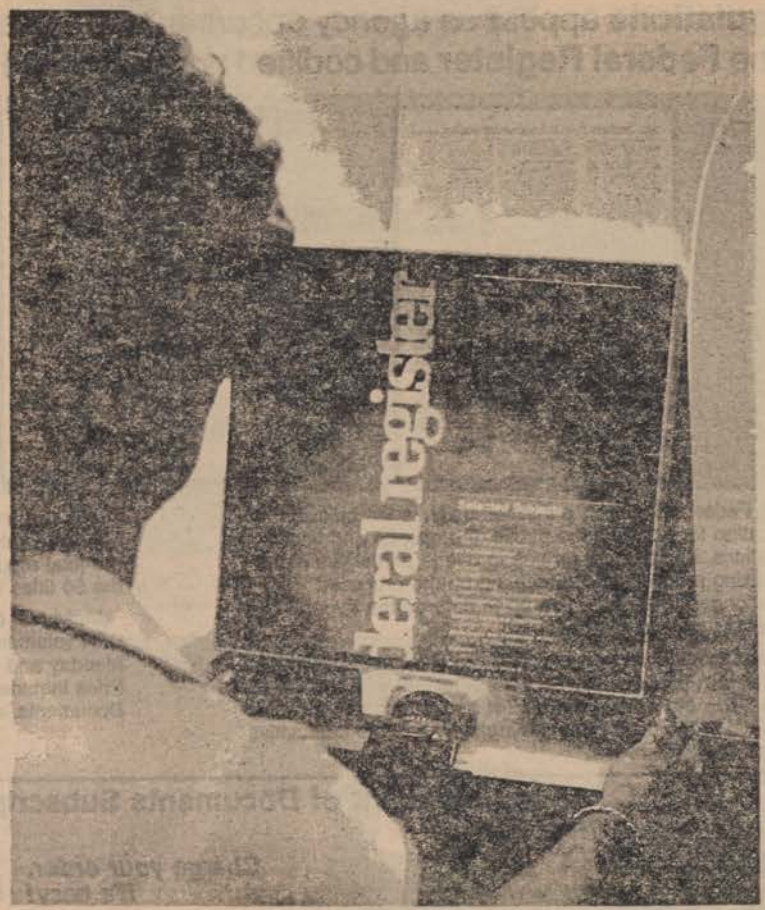

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